BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	
Pursuant to Section 271 of the	)	CC Docket No. 01-277
Telecommunications Act of 1996	)	
To Provide In-Region, InterLATA Services	)	
In Georgia and Louisiana	)	

DECLARATION OF CHERYL BURSH AND SHARON NORRIS ON BEHALF OF AT&T CORP.

October 19, 2001

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ON BEHALF OF AT&T CORP.

I. PROFESSIONAL BACKGROUND OF CHERYL BURSH

1. I am employed by AT&T Corp. as a District Manager. I am responsible for performance measurement and remedy plan advocacy for the AT&T – Southern Region. My area of expertise is the development of an effective methodology for measuring BellSouth's performance. I have represented AT&T in several regulatory proceedings, including performance measurement workshops and hearings conducted in Louisiana, North Carolina, Florida and Georgia. I have held a variety of management positions at AT&T over the last 19½ years, involving, *inter alia*, strategic planning, sales of large business systems and telecommunications services, development for operation support systems, product marketing, and technical support for computer systems. I have a Bachelor of Science Degree from Johnson C. Smith University and a Master of Science Degree from George Washington University.

II. PROFESSIONAL BACKGROUND OF SHARON NORRIS

2. I am a consultant with SEN Consulting, Inc. My business address is P.O. Box 658, Loganville, Georgia 30052. I received a degree in Distributive Education from DeKalb College in 1972. I have been employed in the telecommunications industry for over twenty-seven years. I began my career with Southern Bell in 1973, in one of its Commercial Business offices in Atlanta, Georgia. From 1973 until 1983, I held various positions in Southern Bell's business offices, business marketing organizations, retail stores, and support staff organizations. In 1985, at the time of the Bell Telephone breakup, I chose to move from Southern Bell to AT&T where I worked in the Consumer Sales Division of American Bell and later AT&T Information Systems. From 1985 until 1991, I worked in the Human Resources department of AT&T. In 1991, I transferred to AT&T's Law and Government Affairs Division. Initially, I served as a loaned executive to the Governor's Efficiency Commission for the State of Georgia. In this capacity, I examined current government practices and policies designed to increase government efficiency. In 1995, I became AT&T's representative to the Georgia Public Service Commission ("GPSC"). In this role, I advocated AT&T's position on regulations and issues regarding opening local exchange markets to competition. I continued in this role until 1997 when I also began to monitor and analyze BellSouth's compliance with its obligations to provide AT&T nondiscriminatory access to BellSouth's Operational Support Systems ("OSS") throughout its nine-state territory. I retired from AT&T in 1998 and am now a consultant with SEN Consulting, Inc. In this capacity, I continue to monitor and analyze BellSouth's compliance with its obligations to provide AT&T nondiscriminatory access to BellSouth's OSS.

3. I have appeared in state workshops in Alabama, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee that covered a wide range of topics including OSS, performance measures, and third-party testing. I have participated in

meetings with the Federal Communications Commission (the "Commission") and the Department of Justice ("DOJ") on these same issues. I also filed an affidavit with the Commission on behalf of AT&T in Docket 97-231.

III. SUMMARY OF DECLARATION

4. In its application to provide in-region interLATA long distance services in Georgia and Louisiana, BellSouth contends that it is providing competitive local exchange carriers ("CLECs") with nondiscriminatory access to its OSS. In that connection, BellSouth asserts that its performance monitoring plans and results, coupled with its purported self-executing enforcement remedy plans ("SEEM"), demonstrate that it has met its statutory obligations and will continue to meet such obligations after any Section 271 approval. In this declaration we will discuss why BellSouth's Georgia and Louisiana performance monitoring plans, data, and enforcement mechanisms are wholly inadequate to demonstrate that BellSouth is presently satisfying its statutory obligations or will satisfy such obligations in the wake of any Section 271 relief.

5. Part IV of the declaration briefly addresses the requirements for performance measurements that BellSouth must satisfy to make a threshold showing of nondiscrimination under Section 271 and explains the evolution of the performance measures on which BellSouth relies to support its application. The declaration shows that BellSouth's reliance on its performance monitoring plans and results is premature because: (1) critical issues regarding the validity, reliability and accuracy of BellSouth's performance data remain unresolved; (2) BellSouth's performance data are otherwise unreliable because BellSouth has unilaterally altered the business rules governing measures approved by the GPSC, thereby demonstrating that it cannot be trusted to comply strictly with performance monitoring processes; (3) the measures on which BellSouth relies for purposes of its application are ill-

defined or fail to capture actual performance; and (4) BellSouth's performance reports are littered with internal inconsistencies and other discrepancies highlighting the lack of merit in BellSouth's claim that its data are reliable. Tellingly, even BellSouth's own application is saturated with BellSouth's confessions confirming the unreliability of its performance monitoring processes. These critical issues regarding BellSouth's performance data should and must be resolved before any Section 271 entry. And, in all events, these issues highlight the paucity of BellSouth's claim that its performance results provide adequate assurance that it has satisfied its Section 271 obligations.

6. In addition, as set forth in Part V, even BellSouth's own highly selective, incomplete and inadequate performance data demonstrate that its application does not support its contention that it has provided nondiscriminatory support to CLECs. CLEC orders remain subject to a high degree of manual processing, low flow-through rates, and unacceptably low service order accuracy rates. Similarly, BellSouth is still unable to provide timely status notices to CLECs that are critical to the ordering process. Furthermore, BellSouth's provisioning of orders remains deficient.

7. Finally, Part VI explains that BellSouth's anti-backsliding plans in Georgia and Louisiana have fundamental structural defects that preclude them from providing effective protection for competition, including a wide variety of methodologies that are designed to ensure that BellSouth will experience no substantial financial consequences for non-compliant conduct.

IV. APPROPRIATE PERFORMANCE DATA ARE REQUIRED TO ESTABLISH THAT BELLSOUTH IS PROVIDING NONDISCRIMINATORY PERFORMANCE FOR COMPETITORS.

8. As both the sole supplier of essential local facilities and services required by CLECs for entry into the local market and the CLECs' biggest competitor in the local market,

the BOCs have no market incentive to provide quality wholesale services to CLECs.[1] As a result, Congress required the BOCs in Section 251 of the Act to provide services and facilities to CLECs in a just, reasonable and nondiscriminatory manner,[2] and those requirements were made prerequisites to the provision of in-region, interLATA services by the BOCs by their incorporation in the competitive checklist in Section 271.[3]

9. BellSouth cannot establish that CLEC access to its operations support systems is nondiscriminatory simply by asserting or promising that it will be so. Nor can BellSouth rely on the allegedly nondiscriminatory design of its systems and procedures to obviate the need for review of its actual performance, for as the Commission has recognized, "the BOCs' use of nondiscriminatory, automated order processing systems . . . does not guarantee that requests placed via these systems are actually completed within [the same] period of time."[4] Thus, BellSouth must ***demonstrate*** that nondiscriminatory access is actually being delivered to CLECs. This Commission has found "that the most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage [and that] [p]erformance measurements are an especially effective means of providing . . . evidence of the quality and timeliness of the access provided by a BOC to requesting carriers."[5]

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[1] *See Notice of Proposed Rulemaking, Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (released April 17, 1998) ("*Performance Measurements NPRM*"), ¶¶ 1-2, 8.

[2] *See* 47 U.S.C. § 251(c)(2), (3) & (4).

[3] *See* 47 U.S.C. § 271(c)(2)(B)(i), (ii) & (xiv).

[4] First Report and Order, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act*, CC Docket No. 96-149 (released December 24, 1996), ¶ 243.

[5] Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (1999) ("*New York 271 Order*") ¶ 53.

10. To prove that nondiscriminatory access is actually being delivered to CLECs, BellSouth must demonstrate that it is "provid[ing] access to competing carriers in 'substantially the same time and manner' as it provides to itself."[6] As a consequence "when a retail analogue exists," a BOC must provide access that is equal to . . . the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy and timeliness." *Id.*

11. To make this showing, BellSouth must monitor and measure its performance for CLECs and submit that information to the Commission with its application together with "comparative performance information" regarding its performance of the same or analogous functions for its own retail operations.[7] Moreover, BellSouth must show, based on <u>stable</u> and <u>verified</u> data, that parity of performance is being delivered for all operations support systems functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing,[8] and that such parity of performance is being delivered for each of the three modes of competitive entry: interconnection, services offered for resale, and unbundled network elements ("UNEs"), including combinations of elements.[9]

12. The Commission has made clear that an appropriate performance measurement plan must include at least the following characteristics:

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[6] *New York 271 Order* ¶ 44.

[7] Memorandum and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1974, as amended, to Provide In-Region InterLATA Services in Michigan*, 12 FCC Rcd. 20543 (1997) ("*Michigan 271 Order*") ¶ 212 (BOC must provide "comparative performance information" for unbundled network elements as well as resale services to permit meaningful comparisons between its performance for CLECs and its performance for its own retail operations); ¶¶ 139-141.

[8] *Id*., ¶¶ 128, 130, 137, 158.

[9] *See, e.g*., *id*., ¶ 133 (BOC must provide access to OSS functions to competing carriers that "supports each of the three modes of competitive entry strategies established by the Act: interconnection, unbundled network elements, and services offered for resale"); ¶ 159-160 (specifically requiring proof of "nondiscriminatory access to OSS functions associated with unbundled network elements").

(1) it must support statistically valid comparisons of the BOC's performance for CLECs with its performance for its own retail operations;[10]

(2) it must be based on clear and precise definitions of the performance measurements to be used and the data to be collected and reported;[11]

(3) it must monitor the BOC's performance for each of the principal pre-ordering, ordering and provisioning, maintenance and repair, billing, and other OSS functions;[12]

(4) it must capture and retain sufficiently disaggregated information to account for performance differences caused by variations in the underlying service or activity mix;[13]

(5) it must be actually implemented and producing stable results which demonstrate that nondiscriminatory access is in fact being provided to CLECs for interconnection, services available for resale, and unbundled network elements;[14] and

(6) it should be subject to appropriate audit procedures so that all parties can rely with confidence on the data reported by the BOC.[15]

13. In its *Second Louisiana Order*, this Commission highlighted as one of BellSouth's "major compliance problems" BellSouth's failure to provide performance data demonstrating that "it offers nondiscriminatory access to unbundled network elements in a manner that satisfies the statutory requirements."[16] Unfortunately, BellSouth's performance data

[10] *See, e.g., Michigan 271 Order*, ¶¶ 212, 139-141.

[11] *See, e.g., id.*, ¶¶ 209, 212.

[12] *See, e.g., id.*, ¶¶ 128, 130, 137, 158.

[13] *See, e.g., id.*, ¶¶ 206, 212.

[14] *See, e.g., id.*, ¶¶ 133, 159-160.

[15] *See, e.g.*, *Bell Atlantic/Nynex Order*, App. C, p. 125.

[16] Memorandum Opinion and Order, *Application of BellSouth Corporation, et al. For Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20599 (1998) ("*Second Louisiana Order*") ¶ 10.

continue to suffer from fundamental infirmities that preclude reliance on them as proof of nondiscriminatory performance.

A. Reliance on BellSouth's Performance Monitoring Plan and Results is Premature.

14. BellSouth's reliance on its performance monitoring plans and performance results is premature. In order to place these issues in context, it is important to understand the evolution of BellSouth's Georgia and Louisiana Service Quality Measurement Plans, as well as the current state of their development and implementation.

1. Status of Development of Georgia SQM

15. In October 1997, the GPSC opened Docket 7892-U to address the establishment of an appropriate performance monitoring plan for BellSouth. In its Order entered on May 6, 1998, the GPSC established certain performance measurements that BellSouth was required to implement and directed BellSouth to file monthly status reports on its performance so that it could continue "to assess what performance measures are necessary and helpful to the [Georgia] Commission as it strives to meet its obligations in the environment of deregulation and as competition continues to grow in the local exchange markets in Georgia." *May 1998 Order* at 26.[17] The GPSC also ordered that BellSouth "provide access to the available data (i.e. Data Warehouse) and information necessary for a carrier receiving Performance Monitoring Reports to verify the accuracy of such reports." *May 6, 1998 Order* at 30.

16. During calendar year 1998, BellSouth started filing Monthly Service Quality Measurement ("SQMs") reports setting forth its performance results. In June 2000, the GPSC initiated the second phase of the docket that was designed to refine BellSouth's performance measures and establish enforcement mechanisms. In May 2000, before the

[17] *See* Order, Docket No. 7862-U (May 6, 1998) ("*May 1998 Order*"), BellSouth Application (App. D-GA, Tab 2).

commencement of the second phase of the docket, BellSouth filed an SQM containing the performance measurements and standards that it proposed to use to monitor its performance for CLECs. The CLEC Coalition vigorously opposed the adoption of BellSouth's then-filed plan and proposed alternative measurements.

17. After evaluating the performance monitoring proposals submitted by the parties, the GPSC, in an Order dated January 12, 2001, approved (with modifications) BellSouth's proposed SQM.[18] The *January 12, 2001 Order* adopted a number of measures that had been proposed by the CLECs. In that same decision, the GPSC directed BellSouth to "submit such compliance filings as are necessary to reflect and implement the standards and mechanism established by this Order." *Id.* at 30.

18. In April 2001, BellSouth issued a new SQM ("April 2001 SQM") that purportedly complied with the *January 12, 2001 Order*. As explained more fully herein, contrary to the explicit directives of the GPSC, BellSouth unilaterally altered previously-approved measurements by, *inter alia*, changing the business rules governing a number of measures.

19. In addition, the CLECs had been met with considerate resistance when attempting to gain access to BellSouth's raw data. In response to motions for reconsideration and clarification filed by BellSouth and the CLECs, the GPSC, on May 7, 2001, reiterated that BellSouth must "provide access to all available data (*e.g.* PMAP, Data Warehouse, raw data) and information necessary for a carrier receiving Performance Reports to verify the accuracy of such

[18] Order, I*n Re: Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*, Docket No. 7892-U (Ga. PSC. Jan. 12, 2001) ("*January 12, 2001 Order*").

reports…."[19] The GPSC also established a procedural schedule for workshops to address, *inter alia*, revisions that should be made to the metrics to ensure their comprehensiveness and accuracy.

20. On September 10, 2001, the CLEC Coalition and BellSouth submitted proposed revisions to the performance measures, standards, and enforcement mechanisms. On October 17 and 18, the GPSC conducted workshops to discuss these proposals.

21. Important metrics issues in Georgia remain in dispute, including the appropriate performance standards governing hot cuts and other measures. Further, although BellSouth's application repeatedly emphasizes the sheer volume of metrics in its SQM, scores of these sub-metrics are designated as "diagnostic" in its August MSS. As a consequence, no retail analog or benchmark standards have been established for these measures, including key measures on jeopardy notice and completion notice intervals.

22. Critically, serious issues regarding the integrity of BellSouth's performance data that were uncovered during KPMG's Third Party OSS Test in Georgia remain unresolved. In May 20, 1999 – one year before BellSouth issued its May 2000 SQM – the GPSC established a third party test of BellSouth's OSS to ensure that BellSouth's systems met "the spirit and the intent of the Telecommunications Act of 1996.[20] As a part of the OSS Third Party Test, KPMG conducted metrics testing that included, *inter alia*, an evaluation of BellSouth's practices in processing data used to generate its performance results under BellSouth's September 1999 SQM.

[19] Georgia Public Service Commission Order on Motions for Reconsideration and Clarification, Docket No. 7892-U (May 7, 2001) at 1.

[20] Georgia Public Service Commission's Staff Report and Order and Petition for Third Party Testing, Docket No. 354-1, filed May 20, 1999 at 1, (BellSouth Application) (App. F-GA, Tab 27).

23. On March 20, 2001, KPMG issued its Master Test Plan Final Report ("Final Report"). As explained in more detail in the separate Affidavit of Sharon Norris, the OSS Test conducted by KPMG is fundamentally flawed. However, even KPMG's flawed OSS Test identified a number of areas where BellSouth's performance monitoring and reporting processes are sorely deficient.

24. As even BellSouth concedes in its application "11 Not Complete tests result[ed] from [a number of] Exceptions that KPMG is currently evaluating." Varner GA Aff. ¶ 406. Exception 89 remains open in the metrics test because KPMG has been unable to verify that BellSouth's reported data are accurate. Similarly, Exception 79 remains open because BellSouth has not developed and implemented data retention policies to allow thorough audits of its data. Once those policies are implemented, KPMG must then assess whether BellSouth's self-reported performance results are consistent with its raw data. Furthermore, Exception 89 that relates to the actual discrepancies in BellSouth's data will be closed only after KPMG has conducted this analysis. Exceptions 136 and 137 involve discrepancies between BellSouth's and KPMG's collected data. During a status call on October 17, 2001, KPMG stated that it will conduct a re-test for these two exceptions for LSRs sent *via* the TAG interface using a randomly selected day in September 2001 CLEC aggregate data. The exceptions that remain open in Georgia involve important data integrity issues that must be resolved before any determinations can be made regarding the validity and reliability of BellSouth's performance results.

25. In addition, the GPSC ordered KPMG to audit three months of BellSouth's performance data to assess their compliance with its *January 12, 2001 Order*. That audit is designed to reevaluate all of BellSouth's measures that were previously audited and examine any new metrics and levels of disaggregation that were implemented by BellSouth after

the *January 6, 2000 Order*. This KPMG audit, which is not expected to be completed until December 2001, will include the following: (1) Data Collection and Storage Verification and Validation Review Test; (2) Metrics Definition Documentation and Implementation Verification and Validation Review Test; (3) Metrics Data Integrity Verification and Validation Review; and (4) Metrics Calculation and Reporting Verification and Validation Review. However, even the preliminary results of this ongoing audit confirm that data integrity problems continue to plague BellSouth's performance monitoring processes.

26. During this phase of the metrics audit, KPMG has attempted to replicate performance results that BellSouth provided on trend charts to KPMG. However, KPMG could not replicate: 20% of the sub-metrics in BellSouth's Month 1, 2001 results; 18% of the sub-metrics in BellSouth's Month 2 results; and 10% of the sub-metrics in BellSouth's Month 3 results.[21] These data integrity issues that remain unresolved are neither trivial nor insignificant.

27. Further, during a status call on October 17, 2001, KPMG reported that it had replicated 13 or 18% of the 73 BellSouth measures covering three months of BellSouth's data as reported in its SQM, that uses the same data as the MSS reports attached to the affidavit of BellSouth's witness, Mr. Varner. The remaining measures have not yet been replicated; thus no determination of the accuracy of these metrics has yet been made. Importantly, the replication testing that KPMG is currently conducting does *not* evaluate the accuracy and completeness of the data underlying BellSouth's performance results. Those issues will be addressed in the separate Metrics Data Integrity Verification and Validation Review. The latter test is in the early stages of implementation. As part of the data integrity review, KPMG is currently reviewing the raw data underlying BellSouth's FOC timeliness results to determine if

[21] These replication efforts focused on May, June and July data as applicable. *See* Varner GA Aff. ¶ 424.

these data suffer from the same data discrepancies that have been uncovered during the ongoing third party test in Florida.

28. In that connection, the third party testing that is being conducted in Florida has uncovered substantial problems regarding the reliability of BellSouth's performance measurements reporting processes. Thus, for example, in Florida KPMG found that BellSouth's performance results on rejection intervals for local number portability orders were "inconsistent with the documented metrics calculations.[22] Significantly, KPMG also found that BellSouth's June 2001 results "incorrectly excluded data," that should have been captured in BellSouth's order confirmation timeliness results. *Id.*

29. KPMG has issued other exceptions in Florida that call into question the reliability of BellSouth's performance data. KPMG has found that "BellSouth does not properly construct the processed data used to validate" measures on rejection notice and FOC intervals. *Id.*, Exception 36. KPMG also could not replicate the data in BellSouth's May 2001 report for Acknowledgement Message Timeliness. *Id.*, Exception 109. Similarly, KPMG has been unable to replicate BellSouth's reported data in its January 2001 report on the Total Service Order Cycle Time Service Quality Measure. *Id.* Exception 101. Furthermore, KPMG has determined that BellSouth fails to capture xDSL transactions which are processed through the Corporate Order Gateway for flow-through. *Id.* Exception 113. Exception 114 found that BellSouth incorrectly excludes data that should be captured in the calculation of FOCs for fully and partially mechanized orders — an exclusion that prevents performance reports from accurately reflecting the service provided. Thus, the ongoing testing in Florida simply confirms that BellSouth's performance monitoring and reporting processes are deficient in important respects.

[22] KCI Exception Report, Exception 10, PMR5, Florida BellSouth OSS Test Evaluation Status Report at 9 (Oct. 5, 2001).

30. Against this backdrop, BellSouth's 271 application is premature. Indeed, BellSouth seeks the Commission's approval before critical issues relating to the performance metrics have been resolved and before the performance data underlying its performance results have been validated. The Commission should not rise to the bait.

2. Status of Development of Louisiana SQM

31. In June 1998, the Louisiana Public Service Commission ("LPSC") adopted on an interim basis the Georgia SQM approved by the GPSC on May 6, 1998. The LPSC later opened Docket No. U-22252-C to develop a final SQM that would govern BellSouth's performance. By General Order issued on August 13, 1998, the LPSC modified the previously-adopted SQM.[23]

32. The *LPSC August 31, 1998 Order* required BellSouth to file monthly performance monitoring reports and established procedures for further evaluation of performance measures. As part of that process, the LPSC Staff issued its Interim Recommendation resolving 69 metrics issues.

33. On February 12, 2001, the LPSC Staff issued its Final Recommendation in Docket No. U-22252-C; and the LPSC adopted the Final Staff Recommendation and issued its Order on May 14, 2001. ("*LPSC May 14, 2001 General Order*")

34. In its *May 14, 2001 General Order,* the LPSC revised certain measures, added other metrics, imposed additional levels of disaggregation, and established performance standards and a remedy plan. BellSouth was required to implement these measurements and standards within 45 days or in its July data.

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[23] LPSC, General Order, Docket No. U-22252-C (Aug. 31, 1998), Bell South Application (App. D-LA, Tab 25) ("*LPSC August 31, 1998 Order*")

35. On April 20, 2001, BellSouth filed its Section 271 application before the LPSC. BellSouth stated, however, that for purposes of its application it would submit its performance data for Louisiana in accordance with the Georgia, rather than Louisiana, SQM. Noting that BellSouth failed to comply with the LPSC's Order, AT&T opposed BellSouth's reliance on the Georgia SQM for purposes of its Louisiana 271 application. However, the LPSC accepted BellSouth's use of the Georgia measurement plan. Because BellSouth's Louisiana data in its pending Section 271 application are based upon the Georgia SQM, the deficiencies in the Georgia SQM referenced herein apply equally to the measures upon which BellSouth relies for purposes of its application in Louisiana. As a consequence, BellSouth's Louisiana application is also premature because of, *inter alia*, the significant data integrity issues that must be addressed and resolved prior to Section 271 entry.

3. BellSouth's Improper Implementation of Metrics.

36. The performance data on which BellSouth relies are otherwise unreliable because BellSouth has manipulated the performance reporting monitoring process. In its application BellSouth trumpets the sheer number of the performance measurements in its Georgia SQM.[24] However, the sheer number of performance measurements is absolutely meaningless if they do not accurately capture the performance they are purportedly intended to measure. In order to provide meaningful information on the issue of whether nondiscriminatory access is being provided, performance measurements must be clearly defined and implemented properly.[25] Further, performance measurements should not be subject to unilateral redefinition or manipulation by the BOC. Moreover, in order for performance measurements to accurately

[24] *See, e.g.,* BellSouth Application at 22 (noting that it reported data covering 2,250 sub-metrics).

[25] *Michigan 271 Order* ¶ 212 (noting that the BOC must "ensure that its performance measurements are clearly defined"); ¶ 209 (a BOC cannot rely on performance measurement which are not "clearly explained").

capture the service BellSouth provides to CLECs, the performance metrics must measure all transactions during the reporting period, include an accurate and complete description of the data used to calculate performance results, describe business rules, reference all data excluded from calculations, define all relevant terms, set forth the formula for calculating metrics results, and ensure that the measurements are sufficiently disaggregated so that "like-to-like" comparisons can be made. Because BellSouth is relying on its Georgia SQM and self-reported performance data to establish that it has fully satisfied its Section 271 obligations, BellSouth also bears the burden of establishing that its performance data are accurate.[26] BellSouth has not satisfied and cannot satisfy this basic test.

37. Perhaps one of the most disturbing aspects of BellSouth's conduct in the area of performance monitoring is its unilateral modification of the business rules governing performance metrics. As noted above, the GPSC directed BellSouth to submit compliance filings reflecting the measurements and standards it approved. Notwithstanding that Order, BellSouth has unilaterally redefined business standards, flouted the directives of the GPSC, and taken the remarkable position that it can change any previously-approved metrics to conform to whatever reporting practices BellSouth deems appropriate. BellSouth attempts to gloss over these deficiencies by characterizing any performance reporting issues as trivial. However, no sleight of hand can obscure that BellSouth's unilateral manipulation of performance measures, disregard of the Order of the GPSC, and deficiencies in its performance reporting process demonstrate that the performance data on which it so heavily relies are inherently unreliable and

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[26] *Memorandum Opinion and Order, Application by BellSouth Corp., et al. for Provision of In-Region InterLATA Services in South Carolina*, 13 FCC Rcd. 539 (Dec. 24, 1997) (¶ 37) ("the BOC applicant retains at all times the ultimate burden of proof that its application is sufficient") (footnote omitted).

provide no support for BellSouth's position that it has successfully fulfilled its statutory obligations.

38. In the *Second Louisiana Order*, the Commission recognized that the timeliness of order status notices such as FOCs, rejection notices, jeopardy notices and completion notices is "crucial to the ability of new entrants to compete effectively." *Second Louisiana Order* ¶ 117. In that connection, this Commission explained that "[t]imely return of a FOC notice is critical because it informs the competing carrier of the status of its order by: (1) confirming that the order has been accepted; and (2) providing the due date for installation of service." *Id.* ¶ 120 (footnote omitted).[27] The Commission also recognized that "[t]imely delivery of order rejection notices directly affects a competing carrier's ability to serve its customers, because such carriers are unable to correct errors and resubmit orders until they are notified of their rejection by BellSouth." *Id.* ¶ 118 (footnote omitted). Furthermore, the Commission noted that "it is critical that the BOC provide the competing carrier with a timely jeopardy notice if the BOC, for any reason, can no longer meet the due date." *Id.* ¶ 131 (footnote omitted). And the Commission also found that an order completion notice is "critical" because "[u]ntil the [competing carrier] receives a service order completion notice, it does not know that the customer is in service, and it is unable to begin billing the customer for service or to address maintenance problems experienced by the customer." *Id.* ¶ 130 (footnote omitted).

39. In its *Second Louisiana Order,* the Commission found that BellSouth's performance data demonstrated that it failed to provide nondiscriminatory access. In its current application, BellSouth contends that its self-reported performance data now confirm that it has

[27] *See also* Memorandum Opinion and Order, *Joint Application of SBC Communications, Inc., et al., For Provision Of In-Region InterLATA Services in Kansas and Oklahoma*, CC Dkt. No. 00-217 (rel. January 22, 2001) ("*Kansas/Oklahoma 271 Order*") ¶ 137 (recognizing that the timely return of order confirmation notices "is a key consideration for assessing whether competitors are allowed a meaningful opportunity to compete.")

satisfied its Section 271 obligations. Varner GA Aff. at 36; Varner LA Aff. at 46. This simply is not true. Indeed, as explained in more detail below, BellSouth's performance has not significantly improved; BellSouth has simply gamed the performance monitoring process.

40. **<u>LSRs Submitted In One Month And Reported In Another</u>**. Over the last several months, AT&T has compared BellSouth's reported data against AT&T's own data on performance transactions. This analysis revealed significant discrepancies in BellSouth's performance results, including their apparent exclusion of AT&T's LSRs. AT&T informed BellSouth about these discrepancies; however, BellSouth's response was less that satisfactory. Remarkably, BellSouth admitted that its performance results on reject intervals captured only those LSRs that were <u>submitted</u> and <u>rejected</u> in the <u>same</u> month.[28] Thus, BellSouth confirmed that any LSR that is issued in one month, but rejected in another, is excluded from its performance results for this measure. Notably, the business rules governing this metric that were approved by the GPSC permit no such exclusion.[29] Thus, BellSouth has omitted wholesale categories of orders from its performance results. As a consequence, BellSouth's performance results on rejection notice intervals are incomplete and unreliable.

41. **<u>Non-Business Hours</u>**. BellSouth has devised other ways to distort its performance in returning FOCs and rejection notices. The measurements on Reject Interval and FOC Timeliness that were approved by the GPSC explicitly exclude business hours for *Non-Mechanical* LSRs. However, in calculating its performance on these measures, BellSouth unilaterally excluded non-business hours from the interval calculation for *partially mechanized* local service requests.

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[28] BellSouth also excludes this same category of orders when calculating its results on completion notices.

[29] *See* Varner (GA) Aff., PM-1, Measure O-8: Reject Interval at 2-22 (Apr. 6, 2001).

42. According to the business rules governing measures approved by the GPSC, a partially mechanized LSR submitted on Monday at 1:00 p.m. should result in the CLEC receiving a FOC no later than 7:00 a.m. the next morning. With BellSouth's unauthorized exclusion, BellSouth would still be compliant if it returned the FOC by 11:00 a.m. on Wednesday, almost one and a half days later.

43. BellSouth's unilateral exclusion of non-business hours from its calculations of rejection and FOC intervals plainly skews its actual performance in several significant respects. The metrics approved by the GPSC established certain benchmark standards that are based upon the actual hours that elapse before timely return of these status notices. However, by unilaterally excluding non-business hours from its calculations on status order intervals for partially mechanized orders, BellSouth has contorted an undisputed failure to meet established minimum performance standards into an acceptable level of abysmally low performance. Indeed, BellSouth's exclusion has essentially increased the benchmark standards previously approved by the GPSC by 12 or more hours.

44. Additionally, BellSouth's unauthorized modification to these metrics renders it impossible to conduct any comparative analysis regarding its performance in returning these status notices for fully mechanized orders (that are not subject to the business hours exclusion) against its performance for returning status notices for partially mechanized orders (that are subject to such exclusion). Moreover, by excluding non-business hours from its calculation for partially mechanized orders, BellSouth has absolutely no incentive to extend its hours of operation for CLECs.

45. **Jeopardy Notice Interval**. This Commission has repeatedly stressed the "critical" importance of having incumbent LECs provide timely jeopardy notices to CLECs so

that they can inform their customers when the committed due date can no longer be met. *Second Louisiana Order* ¶ 131. Noting that BellSouth's performance data were inadequate to show that it was providing jeopardy notices in "a nondiscriminatory manner," the Commission stated that it would "examine any future application for sufficient, reliable data to determine whether BellSouth provides jeopardy notices to competing carriers in a timely and accurate manner." *Second Louisiana Order* ¶ 133. BellSouth's performance data on jeopardy notices remain insufficient for any determination regarding its performance in this area.

46. Perhaps one of the most fanciful of BellSouth's claims is its assertion that, although it is accurately calculating its jeopardy notice intervals, it is not relying on such data for purposes of its application because the jeopardy notice measurement interval in the Georgia SQM is somehow defective. Varner GA Aff. ¶ 41; Varner LA Aff. ¶¶ 56, 88. BellSouth's argument borders on the frivolous.

47. The jeopardy notice interval metrics approved by the GPSC state explicitly that the jeopardy notice interval is measured "from the date/time the notice is released to the CLEC/BellSouth system until 5 p.m. on the commitment date of the order."[30] Remarkably, BellSouth's witness Mr. Varner claims that BellSouth is *accurately* measuring the jeopardy notice interval by measuring the interval between the date/time the jeopardy notice is issued and the *date/time of order completion* — a calculation that is plainly erroneous under the business rules governing this measure. Varner GA Aff. ¶ 44. BellSouth also asserts that, because the existing jeopardy notice measure is defective, BellSouth intends to implement modifications to the measure so that the original committed due date is captured, rather than the final order completion due date. *Id.* The reality is that BellSouth's implementation of the

[30] BellSouth Application, App. A, vol. 96, tab U, (April 6, 2001), Measure P-2.

jeopardy notice measurement is plainly erroneous; and its proposed change to the jeopardy notice interval measure would finally bring BellSouth in compliance with the business rules ordered by the GPSC.

48. BellSouth also claims that it has consistently met the performance standard for the jeopardy notice interval measure — a measurement that requires 48 hours notice. Varner GA Aff. ¶¶ 44. This should come as no surprise, particularly since BellSouth's calculation of this interval captures all time until the date/time of order completion. Indeed, BellSouth's August Georgia MSS data reveal that the jeopardy notice interval for loop port combinations was an astonishingly high *246* hours for mechanized orders and *425* hours for mechanized UNE Other Design orders.[31] In all events, given that BellSouth's calculations of its jeopardy notice intervals clearly violate the business rules approved by the GPSC, its assertion regarding the timeliness of its jeopardy notices simply cannot be credited.[32]

49. Similarly, BellSouth also modified the Jeopardy Notice Interval measure by excluding non-dispatch orders from its performance results. This exclusion was never approved by the GPSC. In an effort to justify this exclusion, BellSouth claims that, whenever a non-dispatch order is held for facility reasons, it codes the order as a dispatch order and captures the order in its results for dispatch orders. *See* Varner Aff., Ex. PM-9 at 6. However, BellSouth's modification to the business rules is unauthorized, and its purported procedure for handling this category of orders is nowhere mentioned in the SQM. Moreover, given the

[31] Georgia MSS (UNE), Measure P-2 at 13-14 (Application, Ex. L).

[32] BellSouth states that its performance results on missed appointments are a suitable substitute for its data on jeopardy notice intervals. Varner GA Aff. ¶ 44. BellSouth is incorrect. BellSouth's data on missed installation appointments do not and would not reflect whether a jeopardy notice was actually issued prior to the appointment. In addition, the cancellation or supplementation of orders placed in jeopardy would not be captured in the data on missed appointments.

increased likelihood of errors resulting from the manual processing of orders, there is a distinct possibility that these orders could be improperly omitted from performance results.

50. **Projects**. BellSouth has modified the Reject Interval measure approved by the GPSC by excluding all LSRs that BellSouth classifies as "projects." BellSouth has not specifically defined "project" in this context, however, its Project Manager Guidelines posted on its website indicate that all orders that BellSouth deems to be "complex," as well as orders with as few as 5 DS1 lines or 20 lines for simple services, are excluded from the measure. BellSouth's unauthorized modification to the measure is inappropriate. Worse yet, the lack of clarity regarding the kinds of orders that might be classified as "complex" or "projects" essentially gives BellSouth wide latitude to impose any arbitrary criteria it deems fit to omit LSRs from its performance results.

51. **Missed Appointments**. BellSouth also unilaterally altered the business rules governing missed installation appointments. The measurement approved by the GPSC states that this metric "is the percentage of total orders processed for which BST is unable to complete the service orders on the confirmed due dates."[33] Inexplicably, BellSouth modified this measure in its April 2001 SQM so that it captures only "the percentage of orders with completion dates in the reporting period that are *past the original committed due date*.[34] By modifying the measurement in this manner, BellSouth has excluded from its performance data all performance misses occurring after the original missed appointment. BellSouth's exclusion of such data not only violates the order of the GPSC, but it also plainly skews its actual performance.

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[33] BellSouth Service Quality Measurement Plan, Measurement Descriptions (May, 2000), P-3 (Ex. 1).

[34] Varner (GA) Aff., App. A., vol. 9b, Ex. PM-1 at 3-7 (Apr. 6, 2001).

52. Thus, for example, if BellSouth gives a CLEC five different installation appointments and misses each one, BellSouth's performance results on this measure would capture only the first missed appointment. There is no sound basis upon which BellSouth can properly exclude these performance misses. Indeed, customer relations could be irreparably damaged if a residential customer missed work on 5 different occasions to wait for the delivery of an xDSL loop. These performance failures clearly harm CLECs and should be captured in BellSouth's performance results.

53. Furthermore, the stated rationale that BellSouth has proffered elsewhere for its unilateral exclusion of such data is nothing short of remarkable. BellSouth has given at least three reasons why its exclusion of performance misses occurring after the initial missed appointment is somehow reasonable. First, notwithstanding the fact that the missed appointments measurement as approved by the GPSC did not exclude subsequent misses, BellSouth has stated that, because it "always measured the first appointment on the order [it], it modified the SQM to make this clearer."[35] Second, BellSouth has suggested that the inclusion of performance misses occurring after the original missed appointment would somehow spawn inaccuracies in performance results. Third, BellSouth has argued there is no need to include subsequent measures in the Missed Appointment Measure since the entire provisioning interval is captured in the Order Completion Interval metric. *Id.* BellSouth's analysis is flawed

54. BellSouth's admission that it has "*modified*" previously-approved business rules to conform with its actual reporting practice simply highlights that BellSouth has absolutely no regard for the performance reporting process itself or GPSC-approved business rules. The purpose of a performance monitoring plan is to provide, *inter alia*, a comprehensive, well-

[35] Performance Measurement Reply Affidavit of William N. Stacey, GPSC Docket No. 6863-U ¶ 125 (Ex. 2).

defined set of measures that elucidate with clarity the performance that is being evaluated. Once the measures are approved by the state regulatory authority, BellSouth is required to implement those measures accordingly. Unfortunately, however, BellSouth has a quite different view of its performance reporting obligations. BellSouth apparently believes that previously-approved measures serve no useful purpose unless they are consistent with any reporting practices that BellSouth deems appropriate. BellSouth also believes that it is free to change performance standards approved by the GPSC whenever it suits its purposes. BellSouth's approach is not only misguided, but it also makes a mockery of the performance monitoring process itself.

55. BellSouth's second reason for excluding data from its missed appointments measure is equally infirm. BellSouth maintains that a measurement capturing missed appointments after the original missed appointment is of no utility since it "would give an inaccurate percentage of missed appointments for both the CLEC and BellSouth." *Id.* In embellishing this assertion, BellSouth has explained that *(id.)*:

> Even if BellSouth misses the first appointment, and all subsequent missed appointments are caused by the CLEC/end user, we only measure the BellSouth miss and don't assign any subsequent misses to the CLEC.

56. BellSouth's so-called justification is nonsensical. Indeed, BellSouth ignores that, if any appointment misses occurring after the initial missed appointment are attributable to BellSouth, BellSouth should be held accountable for such performance failures, and those misses should be captured in BellSouth's performance results.[36]

[36] In the *NPRM* ¶ 54, this Commission "tentatively conclude[d] that an incumbent LEC must calculate this percentage by comparing the total number of orders not completed by the committed due date and time during the specified reporting period to the total number of orders to be completed during that reporting period." (Footnotes omitted.)

57. Third, BellSouth is simply wrong in suggesting that the Order Completion Interval measure can serve as a suitable surrogate for missed appointments occurring after the initial installation miss. Indeed, if a customer cancels the order, that order's history (including all missed appointments) would be excluded from the calculation for both Missed Installation Appointments and Order Completion Interval measures. Additionally, if BellSouth misses an appointment of an order with an interval that is longer than the standard offered interval, that data would also be excluded from the Order Completion Interval measure.

58. **Held Order Interval**. BellSouth has also manipulated the Held Order Interval Measure by excluding rural orders. No rural exclusion is permitted under the business rules approved by the GPSC. Again, BellSouth attempts to justify this improper exclusion by arguing that it simply "added wording to the SQM" to conform to its actual reporting practice. This explanation is unacceptable. There is no sound basis upon which BellSouth can or should be permitted to ignore measures approved by the GPSC. Nor should BellSouth be permitted to shield its performance with respect to its provisioning of orders for rural customers. By eliminating an entire class of customers from its performance results, BellSouth appears to have created a new performance standard predicated on a caste-system approach. Under this approach, BellSouth's performance failures in serving rural customers are simply ignored. This caste system approach embraced by BellSouth would have the perverse effect of targeting discrimination against CLECs serving that market — the very type of discrimination that the Act was designed to prevent.[37]

[37] *See, e.g.,* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of* 1996, 11 FCC Rcd. 15499 (1996), *aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils Bd*., 119 S. Ct. 721 (1999) ("*Local Competition Order*") ¶ 525 ("an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions"). *Second Order on Reconsideration, Implementation of the Local Competition Provisions on the Implementation Act of 1996,* 11 FCC Rcd. 19738 (1996) ¶ 9 (OSS access "must be equal to" the access that the incumbent provides to itself.").

59. **LERG Update**. BellSouth has also improperly excluded data relating to its timeliness in providing database updates for the Local Exchange Routing Guide ("LERG"). *See, e.g.*, Varner GA Aff., PM-9 at 6. BellSouth made an unauthorized change to this metric by excluding expedited orders. Timely loading of NXX and LRN impacts whether CLECs can offer service to customers. Conversely, if BellSouth agrees to expedite a request, the CLEC relies on that commitment. If BellSouth fails to perform, customer dissatisfaction can result. There is no justification for excluding expedited orders from the performance calculation. And, in any event, BellSouth's exclusion contravenes the GPSC's Order.

60. **Change Management**. As this Commission has recognized "change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence, a BOC's compliance with Section 271 (c)(2)(B)(ii)." *New York 271 Order* ¶ 103 (footnote omitted). BellSouth has unilaterally modified the Timeliness of Change Management Notices measure by excluding any changes to release data for reasons ostensibly beyond BellSouth's control. This exclusion inappropriately grants BellSouth extraordinary discretion to determine which changes should be omitted from its performance results. For example, BellSouth could determine that any GPSC-directed change is out of its control, even if the GPSC granted BellSouth sufficient time to implement the change and provide adequate notice of the change to CLECs.

61. **Directory Listings.** BellSouth modified the business rules governing the Percentage of Missed Installation Appointments and Average Completion Interval measures by excluding directory listings.[38] As a result, BellSouth's performance data do not capture the

[38] *See* Varner GA Aff. ¶ 376 (conceding that BellSouth excludes directory listings orders when calculating its performance results.)

timeliness of BellSouth's performance in filling orders for directory listings in a timely manner. The measures as approved by the GPSC permit no such exclusion.

62. BellSouth has suggested that directory listings should be excluded from these measures because BellSouth sends all directory listings to BAPCO — a BellSouth affiliate for processing — whether they are BellSouth retail or CLEC directory changes. Varner GA Aff., Ex. PM-9 at 5. However, BellSouth ultimately controls the timing of changes because BAPCO cannot initiate the processing of directory listing transactions until they are received from BellSouth. As a consequence, if BellSouth delays in sending CLEC transactions to BAPCO, CLEC customers may not be listed in the directory by the committed time frame. Therefore, BellSouth's purported rationale for excluding directory listings from these measures is meritless. And, in all events, BellSouth's rationale cannot possibly excuse its unauthorized modification to these measures.

63. Similarly, BellSouth has excluded directory listing orders from certain ordering measures even though such exclusions were never authorized by the GPSC. By excluding such orders from its performance results, BellSouth can conceal deficient performance in those areas. Moreover, without robust and accurate data, neither the Commission nor the CLECs can appropriately assess whether BellSouth is fulfilling its statutory obligations to provide nondiscriminatory services.

64. **LNP Disconnect Timeliness.** BellSouth proposed a measurement on LNP Disconnect Timeliness in its May 2000 SQM. This measure is important because the failure to disconnect a customer from the BellSouth switch in a timely manner will result in lost calls to the CLEC customers. In its *January 12, 2001 Order,* the GPSC adopted BellSouth's proposed measure and established a benchmark standard of 95% within 15 minutes. After the

GPSC issued its order, the CLECs and BellSouth filed motions seeking reconsideration and/or clarification of certain aspects of the order. BellSouth never contended that the business rules for this measure were inappropriate.

65. However, in its April 2001 SQM, BellSouth unilaterally changed the calculations for this measure. The denominator of the calculation for this measure as approved by the GPSC consisted of the "Total Number of Disconnect Service Orders Completed in Reporting Period." BellSouth changed the denominator to "Total Number of Disconnected Numbers Completed in Reporting Period." A single service order frequently has multiple numbers. As a result of BellSouth's modification, any calculation of the interval would likely be shorter.

66. BellSouth states that it is not relying on this measure for purposes of its application because it fails to capture the customer's experience when the customer's telephone number is ported and includes activities in the porting process over which BellSouth purportedly has no control. Varner GA Aff. ¶ 45. BellSouth states further that, in response to its motion requesting revisions to the LNP Average Disconnect Timeliness Measure, the GPSC granted its motion in part and ordered BellSouth to provide performance data commencing in June on a revised version of the metric, as well as three new measures.

67. However, BellSouth's application glaringly omits any reference to the fact that it modified this measure <u>before</u> filing a motion before the GPSC. And conspicuously absent from BellSouth's application is any reference to its required payment of Tier 1 and Tier 2 penalties plus interest attributable to its performance misses in May under the <u>original</u> measure.

68. The foregoing examples of BellSouth's flagrant disregard of the GPSC Order and unilateral manipulation of approved measures confirm that BellSouth's performance

data cannot possibly provide sufficient assurance that it has fulfilled its obligation to provide nondiscriminatory access. Furthermore, BellSouth has compounded these errors by engaging in other highly improper conduct that belies its current claims regarding the reliability and accuracy of its performance results.

69. In this regard, on September 13, 2001, AT&T filed a petition with the GPSC in Docket Nos. 6863-U and 8354-U requesting that the GPSC investigate BellSouth's conduct in processing certain LSRs during the Georgia Third Party Test. Documents uncovered in the North Carolina OSS performance measurements proceedings revealed that BellSouth's Local Carrier Service Center (LCSC) gave preferential treatment to LSRs from Georgia and Florida (including those submitted as part of the third party tests) over LSRs from other states. Such false preferences create the illusion that BellSouth's systems and processes can handle CLEC orders at a certain level of quality, when in reality they do not. On September 27, 2001, BellSouth filed a formal response in which it conceded that it had given preferential treatment to such orders, but denied that its misconduct tainted the Third Party Test. BellSouth's attempt to tamper with the performance monitoring process reveals that BellSouth cannot be trusted to comply with performance standards and generate performance results that accurately portray its actual performance.

4. <u>Inherent Deficiencies in the Measurements</u>.

70. Performance measures serve no useful purpose unless they accurately reflect actual performance. Proper definitions of terms, understandable business rules, and any exclusions from performance calculations are essential to accuracy in performance results. However, a number of measures upon which BellSouth relies in support of its application suffer from fundamental infirmities that assure inaccuracies in performance results. These flawed

metrics include measures on flow-through, hot cuts, trunk blocking, held orders, and completion interval.

71. **Flowthrough**. Flow-through measures how many CLEC LSRs pass through BellSouth's OSS for processing without manual intervention. BellSouth currently uses three different measures for flowthrough: (1) Achieved Flowthrough; (2) Base Calculation; and (3) CLEC Error Excluded Calculation. BellSouth's Achieved Flowthrough measure is calculated by dividing the total number of CLEC orders by the total number of mechanized LSR (less any errors attributable to CLECs). Both BellSouth "CLEC Error Excluded Calculation" and "Base Calculation" measures adjust the denominator of the calculation by including any manual fall-out attributable to BellSouth, but excluding any manual fall-out caused by CLECs or BellSouth design. These two measures are fundamentally flawed. Although it is entirely appropriate to exclude from these two measures any manual processing due to CLEC errors, the exclusion of any such fall-out attributable to BellSouth's own system design skews BellSouth's actual performance. By excluding manual fall-out attributable to BellSouth's own system design, BellSouth's flow-through rates as reported in these two measures are necessarily overstated. Not surprisingly, for purposes of its application, BellSouth does not rely upon its Achieved Flow-Through rate, but rather relies upon the flawed CLEC Error Excluded Measure — a measure that cannot possibly accurately capture BellSouth's performance.[39]

72. **Hot Cuts.** As explained in the Declaration of Denise Berger, BellSouth reports on four hot cut performance measures.[40] As Ms. Berger explains, as to those hot

[39] As explained in the Declaration of Mr. Bradbury, even BellSouth's flawed CLEC Error Excluded Measure demonstrates that BellSouth has not satisfied its statutory obligation to provide nondiscriminatory access.

[40] These measures are Measure P-7, Coordinated Customer Conversion Interval; Measure P-7A, Coordinated Customer Conversions-Hot Cut Timeliness Percent Within Interval and Average Interval; Measure P-7B , Coordinated Customer Conversion-Average Recovery Time; and Measure P-7C, Hot Cut Conversion-Percent Provisioning Troubles Received Within Seven Days of a Completed Service Order.

measures as to which BellSouth has reported data, BellSouth contends that it has satisfied the applicable performance standards. However, the performance measures upon which BellSouth relies for purposes of its application are inherently deficient. BellSouth reports the day the cut was scheduled, as opposed to the time that the cut actually commenced. BellSouth's performance metrics fail to capture the time when the cut-over of the customer's service and transition to AT&T was completed by AT&T, and AT&T was able to port and restore the customer's service. Because the measures on which BellSouth relies fail to capture BellSouth's actual performance in the provisioning of hot cuts, its performance data are wholly inadequate to assess its performance in this area.

73. **Trunk Blocking.** Similarly, as explained more fully in the Declaration of Beverly McConnell, BellSouth's reliance on its Trunk Group Performance — Aggregate ("TGP-1") report to establish its performance with respect to interconnection trunking is misplaced. The TGP-1 measure on which BellSouth relies skews BellSouth's performance. The measure itself excludes data on much of the blockage CLECs experience. In addition, the measure involves an "apples to oranges" comparison of trunk groups. The measure compares blockage on trunk groups between BellSouth's end office with blockage on every other category of groups in the network, including trunk groups that carry more BellSouth traffic than CLEC traffic. As a consequence, the measure does not and cannot capture a fair comparison of trunk group blockage experienced by CLECs and BellSouth. Thus, this measure provides no sound basis upon which any conclusions can be made regarding BellSouth's performance in this area.

74. **Held Orders.** Likewise, BellSouth's Mean Held Order Interval measure is inherently deficient because it operates to mask actual performance. Instead of measuring the average duration that orders are held after the due date until the order is actually completed,

BellSouth excludes orders from this measurement that were held and not worked on the date they were due to be completed. In that connection, when calculating its results for this measure, BellSouth includes only those orders that remain open at the end of the month or reporting period. For example, if an order had a due date of the second day of the month and the order was held for more than three weeks, but was worked before the last day of the month, BellSouth excludes the order from the data and does not report the order as being held. Thus, this measure does not reflect the actual experience of CLECs with regard to held orders, and BellSouth's performance results are inaccurate. Indeed, BellSouth's implementation of this measure gives BellSouth the opportunity to conceal CLEC orders that have been held during the reporting period.

75. **Order Completion Interval.** BellSouth's order completion interval measure is calculated by measuring the elapsed time from when BellSouth issues a FOC to BellSouth's actual order completion date. *See* Varner GA Aff., Ex. PM-13, Measure P-4. This metric is inherently unreliable and does not capture the appropriate provisioning interval. As this Commission tentatively concluded "an incumbent LEC must measure the interval from its receipt of a valid order . . . at its OSS interface until the time it returns a completion notice to the competing carrier. . . ." *NPRM* ¶ 53. Thus, BellSouth's performance results on this measure are inaccurate.

5. <u>BellSouth's Flawed Performance Reports</u>.

76. Remarkably, even taking BellSouth's own deficient performance reports at face value, these reports show that BellSouth's data are riddled with internal inconsistencies that raise serious questions about the validity of the data. Notably, BellSouth reports differing volumes for measures that should have identical volumes. For example, in BellSouth's Georgia June MSS, the loop and port combinations (non-dispatch) results report: (1) a volume of 23,891

in the Missed Appointments metric and (2) a volume of 21,520 in the combined mechanized and non-mechanized Completion Notice metric. Based upon the business rules, the volumes reported for these two metrics should be identical. Indeed, both measures rely on completed orders and contain the same exclusions. However, BellSouth's June performance reports reflect a 10% difference (2,371) in the volumes used to calculate these measures. The low volume of reported completion notices reveals that, either BellSouth is not returning completion notices on a significant number of orders, or BellSouth is failing to capture its performance in its performance reports. Either scenario is unacceptable.

77. BellSouth's July Georgia MSS report is equally flawed. For example, discrepancies exist between the Missed Appointments and Completion Notices measures for loop and port combinations. The total number of loop and port combinations is used to calculate both of these measures. However, for loop and port combinations (non-dispatch) orders, BellSouth reported a volume of 37,669 in the Missed Appointment metric, as opposed to a volume of 30,708 in the Completion Notices metric — a difference of 18.5%. These discrepancies highlight the paucity of BellSouth's claims regarding the accuracy of its performance results.

78. Similar disparities exist in BellSouth's July Georgia MSS Report for the loop and port combinations (dispatch) submeasure. For this submeasure, BellSouth reports that it completed 800 loop and port combination orders under the Missed Appointments metric, but only 650 loop and port combination orders in (the combined mechanized and non-mechanized) Completion Notice metric. Both measures rely on completed orders and call for the same exclusions. The 19.6% difference in the volumes reported for these measures again calls into question the validity of BellSouth's data.

79. Similarly, according to BellSouth's SQM business rules, the measures on Rejected Service Request, FOC/Reject Response Completeness, and FOC/Reject Response Completeness (Multiple Responses) all have the same denominator, *i.e.*, the number of LSRs received. Accordingly, the volume data for each of these measures should match. However, BellSouth's data for these measures in its June Georgia MSS report are internally inconsistent. As illustrated in the charts below, there are significant discrepancies in BellSouth's reported data for UNE-P and LNP (Stand-alone) in June.

80. In each row of the tables below, the volumes BellSouth reported should be identical for each category. In only one instance, however, do the volumes match in all three measures.

UNE-P - JUNE - GEORGIA

	% Rejected Volume	FOC/Rej. Completeness Volume	FOC/Rej. Volume Multiple Responses
Fully Mechanized	26,621	26,621	24,872
Partially Mechanized	12,965	12,965	12,965
Non-mechanized	1,157	1,211	1,194

LNP Stand-alone

	% Rejected Volume	FOC/Rej. Completeness Volume	FOC/Rej. Volume Multiple Responses
Fully Mechanized	2,571	329	329
Partially Mechanized	1,402	3,398	3,397
Non-mechanized	760	899	899

81. BellSouth has not yet corrected this problem. As the charts below illustrate, BellSouth's July MSS Georgia Report contained similar data discrepancies for UNE-P and LNP (Stand-alone) orders.

UNE-P - JULY - GEORGIA

	% Rejected Volume	FOC/Rej. Completeness Volume	FOC/Rej. Volume Multiple Responses
Fully Mechanized	38,936	38,936	33,343
Partially Mechanized	16,575	16,575	16,575
Non-mechanized	228	339	314

LNP Stand-alone

	% Rejected Volume	FOC/Rej. Completeness Volume	FOC/Rej. Volume Multiple Responses
Fully Mechanized	819	233	233
Partially Mechanized	811	1,411	1,411
Non-mechanized	1,228	976	977

82. In addition, AT&T has raised other issues regarding the integrity of BellSouth's data. In that connection, AT&T advised BellSouth that it erroneously reported the same UNE Loop and Port combinations twice in its Georgia performance results: once in its submeasure and again in the UNE other Non-Design submeasure. This double reporting of data affects the accuracy and reliability of as many as 15 submeasures. In its application, BellSouth concedes that its data are inaccurate,[41] and that it corrected this error in its July results.

[41] Varner GA Aff. ¶382.

BellSouth is wrong again. AT&T's August % Reject Service Request Report shows that BellSouth continues to double count data for UNE Loop and Port Combinations.[42]

83. Furthermore, BellSouth's performance results on flow through contain discrepancies. BellSouth's July 2001 Percent Flow Through Service Requests Detail report for Georgia identifies the number of LSRs that fell out for manual processing due to BellSouth error. BellSouth reports that its "BST caused Fallout" volumes totaled 31,931 orders. BellSouth's related "Flowthrough Error Analysis" report identifies the total number of errors committed by BellSouth. BellSouth reported only 21,010 errors for July. These numbers cannot be accurate. An LSR can have more than one error, but the number of LSRs with errors cannot be greater than the total number of errors. However, in BellSouth's performance reports, the number of LSRs with errors significantly exceeds the total numbers of errors reported by BellSouth.[43]

84. BellSouth has also acknowledged in other proceedings that its July and August flow through reports posted to its PMAP website are inaccurate. Indeed, BellSouth witness Ronald M. Pate admitted at a recent South Carolina hearing that a systems change implemented in early June generated inaccuracies in the classification of orders in BellSouth's flow-through report.[44] Mr. Pate indicated that orders may be improperly classified as designed

[42] August 2001, GA Report % Reject Service Request Total Mech. CLEC at 4 (Ex. 3).

[43] BellSouth also notes that AT&T "has questioned the consistency between LSRs reported on the flow-through reports versus those reported on the Percent Rejected Request report." Varner GA Aff. ¶ 376. BellSouth attempts to justify the differences between the volumes in those two reports even though the SQM business rules allow for no such differences. BellSouth attempts to explain the differences by describing a process by which an LSR (which is reported at a version level in both reports) could be auto-clarified and yet fall out for manual processing. Because auto-clarified rejections are described in the SQM as being fully mechanized and because orders that fall out for manual processing are partially mechanized orders, it is impossible for a single version of an LSR to be both fully and partially mechanized. If those LSRs are indeed falling out, then the flow-through report is inaccurate. BellSouth also states that certain directory listing orders are excluded from the Percent Rejected Service Request Report, but included in the flow-through report. However, this is an unauthorized exclusion.

[44] *See* Transcript of Hearing before the South Carolina Public Service Commission, BellSouth witness Ronald M. Pate, Docket No. 2001-209-C, dated August 24, 2001 at 2605-2610 (Ex. 4).

fall-out (which BellSouth excludes from its calculation) when, in fact, those orders fell out due to BellSouth errors. As a result, those orders should be included in the flow-through calculation.[45]

85. In addition, BellSouth's August 2001 Acknowledgement Message Timeliness Report for Georgia reveals that BellSouth's performance data on this measure are unreliable. According to the LENS User Guide, every Purchase Order Number ("PON") and Version should receive an acknowledgement.[46] Stated differently, each version of a successfully submitted PON should receive an acknowledgement. However, BellSouth's own self-reported data for AT&T show that for AT&T's OCN 8392, there were 741 LSR versions submitted *via* the LENS interface, however, only 281 acknowledgements are reported in BellSouth's data; and for OCN 8300, 2611 LSR versions were submitted via LENS, but only 832 acknowledgements are reported.[47]

86. Significantly, even BellSouth has acknowledged that it has experienced difficulties in capturing the data required to generate accurate performance reports. Thus, for example, with respect to its measures on FOC Timeliness for LNP Standalone and Reject Interval-Residence and Reject-Interval business orders, BellSouth has stated that its performance is understated due to it inability to capture data regarding multiple versions of the same version of an LSR that could have been rejected. Accordingly, BellSouth believes that its performance results may be understated.[48]

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[45] *See id*. at 2604-2606.

[46] CG-LENS-011, Issue 10.0—September 29, 2001, 7.9 Acknowledgement (Ex. 5).

[47] *See* Ex. 6, Report: Percent Flow Through Service Request, Acknowledgement Message Timeliness CLEC Report.

[48] However, in the third party testing in Florida KPMG has captured these data and determined that BellSouth does not meet the established performance standards for timely return of fully mechanized UNE FOCs. *See* Florida Observation 95 and Florida Exception 100.

87. Further, AT&T is currently participating with BellSouth in a UNE-Port Loop Combination Test in Georgia to validate the BellSouth-AT&T ordering, provisioning, and billing requirements and procedures for loop/port combination services. Using data it collected in that test, AT&T discovered that hundreds of AT&T's orders were missing from BellSouth's reported data.

88. By letter dated June 28, 2001, BellSouth provided its preliminary findings regarding the data integrity issues that AT&T raised.[49] BellSouth's preliminary findings confirmed that AT&T's concerns regarding missing data were plainly warranted. BellSouth confirmed that it excluded "Dummy" FOCs — an exclusion that violates the GPSC's Order. BellSouth also admitted that it excluded from the rejection interval LSRs that are issued in one month and rejected in another — another improper exclusion. BellSouth has not completed its root cause analysis of AT&T's reported data discrepancies.

89. These serious data integrity problems are critical issues that must be resolved before, rather than after, Section 271 entry. More fundamentally, they underscore the fragility of BellSouth's claims that its actual self-reported commercial data provide strong assurance that it has satisfied its Section 271 obligations.

90. Additionally, the seemingly unending stream of corrections that BellSouth has made and continues to make to its performance reports further demonstrates that it performance monitoring processes are not sufficiently reliable to assure accuracy in performance results. BellSouth seeks to trivialize AT&T's concerns about the continual reposting of BellSouth's performance data by characterizing these instances as "relatively minor." Varner

[49] Letter dated June 28, 2001 from Jan Flint to K.C. Timmons (Ex. 7).

GA Aff. ¶ 382. BellSouth also contends that "many of the changes are minimal and have no effect on the underlying results." *Id.* ¶ 384. BellSouth is wrong on both counts.

91. BellSouth has re-posted changes continually for each of the months for which it has submitted data in this proceeding. Indeed, during the period from July 10 through September 26, BellSouth reported numerous changes to its May report. These corrections that BellSouth characterizes as "minimal" affected well over 100 sub-measures.

92. Similarly, BellSouth posted changes to its June performance reports on August 31, September 12, September 26 and August 1; and these corrections affected 63 sub-measures. BellSouth also posted changes to its July report on September 26 and October 1; and these changes affected 158 sub-measures. Indeed, BellSouth's recently published August data have already been revised for 4 measures.[50] Contrary to BellSouth's assertions, many of these changes were so substantial that they resulted in changes to the compliance determination.

93. It should also be emphasized that AT&T does not contend, as BellSouth suggests, that BOCs should not correct their performance results. What AT&T does contend is that the nature and frequency of the corrections that BellSouth has made and continues to make to its performance results show that BellSouth's performance monitoring systems are not sufficiently mature to handle the CLECs' entry into the local exchange market.

94. Given the substantial data integrity problems that infect BellSouth's performance monitoring and reporting processes, it is critical that CLECs have access to BellSouth's raw data so that they can validate performance results. Regrettably, in clear defiance of two GPSC orders granting CLECs such access, BellSouth has failed to comply with those directives.

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[50] *See* Summary of the changes made to date to the May through August reports (Ex. 8).

95. In order to place these issues in context, it is important to understand BellSouth's data collection process. As BellSouth notes in its application, BellSouth's legacy systems feed data into the ICAIS, commonly referred to as "Barney" and the snapshot database. These data that are fed into Barney and the snapshot database are commonly referred to as the "early stage data." The early stage data are then processed by BellSouth before being sent to the Staging, NODs, and DDS systems. The Staging, NODS, and DDS systems represent the information available in BellSouth's Performance Measure and Analysis Platform ("PMAP"). The data in these systems produce the SQM reports and the records that BellSouth refers to as "raw data files."

96. The "raw data files" available in PMAP do not contain raw, unprocessed data. Indeed, the data available in BellSouth's early data systems have been processed so that some data have been removed. The truly raw, unprocessed data — all data relating to OSS transactions — are in the data warehouse and the snapshot database.

97. BellSouth has unilaterally excluded the following data from certain performance measurement reports: (1) Directory Listing Orders for certain ordering measures; (2) orders classified as Projects for certain ordering measures; (3) LSRs submitted in one month and rejected in another; and (4) completion notices when the order is completed in one month and the completion notice is issued in another. As a result of these exclusions, hundreds or even thousands of service orders will not be included in BellSouth's performance reports, and BellSouth can mask deficient performance in these key areas. Without complete and accurate data, neither this Commission nor CLECs can appropriately gauge whether BellSouth is satisfying its obligation to provide nondiscriminatory access to local services.

98. BellSouth still does not provide the data underlying its LNP flow-through reports, claiming that it is not feasible to provide the information. BellSouth refuses to provide this information even though AT&T's LSRs account for 65% of BellSouth's electronically submitted number portability LSRs. This percentage makes AT&T by far BellSouth's largest client for electronically-submitted requests for LNP service. Yet, BellSouth does not provide these data from its PMAP website. As a result, the information necessary for the CLECs and this Commission to determine the accuracy of BellSouth's performance reports for LNP flow-through services is not available.

99. Further, BellSouth inappropriately excludes "dummy" FOCs from its FOC Timeliness raw data. "Dummy" FOCs serve a critical function for CLECs because they provide confirmation that BellSouth has received a notice to cancel a customer's service request before the order was issued. Although "dummy FOCs" are not included in the FOC timeliness metrics, inclusion of this information in the raw data as required by the GPSC would allow CLECs to monitor BellSouth's performance in this area.

100. The deficiencies in BellSouth's self-reported data, coupled with BellSouth's refusal to provide all the data underlying its reports, undermine any claims that BellSouth's data are accurate. Moreover, the current record provides no basis for BellSouth's claims that its performance provides strong evidence that it has satisfied its Section 271 obligations.

B. BellSouth's Own Application Contains Striking Examples of its Performance Monitoring Deficiencies.

101. Perhaps the most striking evidence of BellSouth's error-ridden performance monitoring and reporting systems is BellSouth's own application. BellSouth's

application contains a veritable plethora of admissions confirming that BellSouth's performance data are tainted in the following ways:

- BellSouth's performance results measuring FOC and Reject Performance Completeness for mechanized LSRs "cannot be relied upon to assess BellSouth's performance, and its performance results for partially mechanized LSRs "produce[] inaccurate results." Varner (GA) Aff. ¶ 42.

- BellSouth's data on Reject Interval and FOC Timeliness are not accurate because BellSouth "temporarily lost its ability to properly identify and account for multiple submissions of the same LSR CC/PON/Ver combination." "*Id.* ¶ 53.

- The replication of BellSouth's retail analog of Design Services for its Provisioning Trouble Within 30 Days measure remains unresolved. *Id.* at ¶ 54.

- BellSouth's performance data inappropriately included repeat troubles for the same line or circuit in the trouble counts for the Percentage of Provisioning Troubles Within 30 Days measure. *Id.* ¶ 55.

- BellSouth's May and June data on OSS Pre-Ordering response times for the TAG interface are reported incorrectly because 2 seconds were added to its retail data, but the timestamp was not moved to the CLEC side of the interface. *Id.* ¶ 56.

- BellSouth's July retail data on its OSS pre-ordering response time measures are incorrect, and its data for August will also be wrong. As a consequence there are no usable retail data for this measure. *Id.* ¶ 57.

- BellSouth failed to exclude from its performance results on trunk blocking problems that were ostensibly attributable to CLECs. *Id.* ¶ 106.

- Problems with BellSouth's due date calculation function resulted in inappropriate intervals being given for UNE combination loop and port non-dispatched orders, thereby rendering inaccurate its performance results for order completion intervals. *Id.* ¶ 132.

- Because "PMAP was picking up the incorrect start date for any CLEC item that had a critical data field populated," BellSouth's performance data on the completion notice interval for UNE Loop & Port Combinations were inaccurate. *Id.* ¶ 133.

- "[A] software problem" resulted in inaccurate usage data being delivered to one CLEC. *Id.* ¶ 155.

- BellSouth's failure to exclude input files from "the ADUF for 4 cycles" resulted in CLEC usage data delivery timeliness rates that were lower than those for BellSouth's customers in July 2001. *Id.* ¶ 156.

- BellSouth is still trying to resolve "failed acknowledgements in both of the interface systems." *Id.* ¶ 187.

- BellSouth is trying to resolve issues regarding the exclusion of its retail trouble reports from its customer trouble report rates for xDSL. *Id.* ¶ 203.

- With respect to the LNP standalone metrics, BellSouth discovered that its data on the average completion notice interval were incorrect because "the data for this sub-metric came from the BARNEY system and . . . the time stamp data is being counted multiple times." *Id.* ¶ 273.

- BellSouth improperly excluded customer requested extended due dates from its calculation of the CLEC resale order completion interval. *Id.* ¶287.

- "[W]hen BellSouth is unable to properly calculate the interval between the service order completion and the release or posting of the completion notice," it simply excludes such records from PMAP results. *Id.* ¶ 364.

- "[W]hen orders are joined with their status entries to determine the timestamp when the completion notice was sent, multiple orders are being recorded for the same Completion Notice and applied in the calculations used to generate the results. *Id.* ¶ 364.

- BellSouth is currently investigating whether completion notice intervals for LNP orders are "incorrectly elongated in the PMAP reports." *Id.* ¶ 365.

- BellSouth failed to remove Loop and Part Combos from the other Non-Design category when calculating performance results for second ordering metrics. *Id.* ¶ 379.

- BellSouth is trying to resolve the generation of invalid values for its pre-ordering OSS Response Interval measure. *Id.* ¶ 410.

102. Thus, BellSouth's own application elucidates with clarity the serious data integrity issues that undermine the reliability of its performance results. In order to diminish the significance of these deficiencies, BellSouth claims that it will improve its performance or that the deficiencies noted are of no real import. The former argument has no probative value in the context of these proceedings, and the latter is demonstrably unsound.

103. In this regard, in its application, BellSouth relies heavily on promises to improve its performance monitoring processes. For example, BellSouth believes that its October results will "correct" the errors in its calculation of the measurement of Provisioning Trouble within 30 days. Varner GA Aff. ¶ 55. BellSouth also maintains that additional training should improve its completion notice timeliness rates for UNE Loop Port and Combinations *Id.* ¶ 133. BellSouth has high hopes that its "action plan" should improve its service order accuracy rates. *Id.* at 146. BellSouth also contends that training programs for its Central Office technicians will improve its results on the Customer Trouble Rate/Line Sharing measure. *Id.* ¶ 204. In addition, BellSouth claims to have implemented new procedures that should reduce trouble reports for the UNE ISDN measures *Id.* ¶ 213.

104. However, BellSouth's promises to take corrective action to cure any existing deficiencies and its hopeful expectations that its performance will improve are just "paper promises" and unfulfilled commitments entitled to no weight. *Michigan 271 Order* ¶ 55.

105. Furthermore, try at it might, BellSouth cannot dismiss AT&T's concerns regarding data integrity issues affecting BellSouth's ordering procedures as minor metrics issues. Thus, for example, BellSouth, conceding the existence of discrepancies in its calculations of performance results for the FOC and Reject Response Completeness measure, BellSouth seeks to minimize the significance of these problems by stating that these are merely minor discrepancies.

BellSouth also points out that neither the KPMG third-party test nor AT&T has ever contended that "orders or their responses were lost." Varner GA Aff. ¶ 43. BellSouth's allegations cannot withstand scrutiny.

106. The Firm Order Confirmation and Reject Response Completeness report should include the number of FOCs and Reject responses issued in any given month -- compared to the number of LSRs received in that month -- to determine the percentage of orders receiving either a FOC or rejection on each version of an LSR. Over several months BellSouth was reporting poor performance for this measure, but stating that the measure is unreliable. AT&T was concerned that, if BellSouth was not capable of accurately reporting its rejections and FOCs for this particular measure, then those same rejections and FOCs would probably be excluded from the FOC and Reject Interval reports, causing those reports to be unreliable as well. Because of these concerns, AT&T analyzed the May 2001 raw data BellSouth provided for one of its OCNs, 8392. AT&T discovered that 82 LSRs existed in the combined FOC and Reject raw data that were not included in BellSouth's FOC and Reject Completeness raw data. AT&T also discovered 121 LSRs in the FOC and Reject Response Completeness raw data file that were not included in the FOC and Reject raw data files.[51]

107. AT&T brought these matters to BellSouth's attention, and BellSouth responded on September 26, 2001. BellSouth's response confirmed that AT&T's concerns were well-founded. Rather curiously, BellSouth directed AT&T to duplicate the performance report by applying exclusions and other directions. However, AT&T was not attempting to duplicate the reports, but rather sought to compare the underlying raw data against the number of FOCs and rejections that had been issued during the month. BellSouth indicated that it had conducted

[51] *See* Letter from K.C. Timmons to Jan Flint dated August 2, 2001 (Ex. 6).

a similar analysis, but used a different data set. AT&T requested a copy of the raw data files used by BellSouth and found that one of the three files included LSRs which were omitted from the raw data used by AT&T. This is an area of significant concern since AT&T obtained its raw data files from BellSouth's web-site. It is untenable for BellSouth to publish measurement reports to AT&T, provide the underlying raw data files with which AT&T should be able to verify the accuracy of the reports, and then conduct analysis in response to AT&T's inquiries using a *different* data set. BellSouth also admitted that it excluded from its Rejection Interval report all rejections that were issued in a different month than the LSR was received. Indeed, BellSouth's response indicates that both the FOC and rejection interval reports are flawed.

108. In its application BellSouth tries to downplay these issues by suggesting that these data discrepancies should be ignored because no lost orders were involved. Varner GA Aff. ¶ 43. This argument is nothing more than a red herring. By suggesting that performance failures are inconsequential unless lost orders result, BellSouth has now superimposed on its own SQM, a brand new performance standard that it alone has created. The issue is not, as BellSouth suggests, whether orders were lost, but rather whether BellSouth has failed to comply with approved performance measures. As to the latter issue, the weight of the evidence shows that BellSouth has plainly failed to meet performance standards.

109. Additionally, although BellSouth observes that the KPMG third party test in Georgia did not identify any cases where orders or their responses were lost, conspicuously absent from its application is any reference to the following open exceptions in the third party test in Florida revealing problems relating to missing LSRs or responses:

> O-64—KPMG has not received responses to several LSRs submitted via the TAG interface.
>
> O-81—KPMG has not received manual FOCs on service that has been assigned a completed status.

O-92—KPMG has not received FOCs from the LCSC after faxing supplemental LSRs to cancel existing orders.

E-105—KPMG has not received responses to several Local Service Requests using EDI.

110. Similarly, BellSouth also seeks to diminish the importance of the data integrity issues raised by AT&T regarding missing Completion Notices. In that connection, BellSouth contends that any "minor" data problems involving Completion Notices have affected "less than 2% of all orders." Varner GA Aff. ¶ 364. BellSouth's analysis cannot withstand scrutiny.

111. In August, AT&T notified BellSouth regarding data discrepancies involving missing Completion Notices. Although BellSouth attempts to portray these data discrepancies as affecting a paltry number of orders, the fact of the matter is, completion notices were missing for over *20%* of AT&T's orders.

112. Further, a review of the July MSS CLEC Aggregation report reveals that substantial volumes of completion notices are missing from BellSouth's report results.

Completed Orders vs. Completion Notices		
Loop/port Combinations Completed Volume	(Dispatch) 808	(Non-dispatch) 37,699
Completion Notice Loop/port Volume	650	30,708
% Difference	19.6%	18.5%
XDSL<10 ckt. Completed Volume	255	
xDSL < ckt. Completion Notice Volume	128	
% Difference	50%	
2w UNE Design Completed Volume	295	
2w UNE Design Completion Notice Volume	86	
% Difference	71%	

113. Thus, BellSouth's own data provide no support for its assertion that it has provided nondiscriminatory access. BellSouth's data are not reliable, accurate or complete. The data that are missing from its reports and the other serious data integrity problems that plague its performance processes show that no confidence can or should be placed in the performance results on which BellSouth relies for purposes of this application.

V. THE PERFORMANCE RESULTS PROVIDED BY BELLSOUTH CONFIRM THAT BELLSOUTH HAS NOT MET ITS SECTION 271 OBLIGATIONS

114. Even BellSouth's own inadequate data show that its performance for CLECs does not support its claim of parity of performance. Thus, for example, BellSouth's MSS reports for Georgia show BellSouth failed: 16% of the submetrics in May; 20% of the submetrics in June; 20% in July and 19% in August:

	May Failures %	May Failures %	June Failures-%	June Failures Volume	July Failures %	July Failures Volume	August Failures %	August Failures Volume
Resale	17	32 of 198	23	40 of 177	16	34 of 214	15	29 of 198
UNE	16	57 of 361	22	84 of 386	22	90 of 410	19	74 of 404
Trunking	13	3 of 23	9	2 of 23	15	3 of 20	30	6 of 20
Other	15	18 of 125	15	18 of 124	21	26 of 121	23	28 of 122
Overall	16	110 of 707	20	144 of 710	20	153 of 765	19	137 of 744

*Volumes exclude August measures for which BellSouth indicated a pass but for which there is no CLEC activity.

115. Moreover, as explained in more detail in the Declaration of Jay F. Bradbury, BellSouth continues to rely excessively on manual processing which spawns unduly long intervals for the return of status notices. As Mr. Bradbury explains, BellSouth generally takes 18 actual hours or more to return FOCs for electronic LSRs that fall out for manual processing, and more than 18 hours to return rejection notices for partially mechanized LSRs. Significantly, by BellSouth's own admission, from May through June 2001, 21% of the LSRs

submitted electronically in Georgia failed to meet the benchmark standards for the timely return of rejection notices. Varner GA Aff. ¶113.

116. Notably, even BellSouth grudgingly concedes that its service order accuracy rates are far from exemplary. *See, e.g.,* Varner GA Aff. ¶ 151 (noting that "improvement" in this area is expected). It has good reason. In BellSouth's July MSS Report for Georgia, BellSouth reported that it failed 15 of 19 (79%) of the Service Order Accuracy sub-measures. This is a critical performance failure. Moreover, BellSouth's performance failures are not confined to the ordering processes. Thus, for example, in August BellSouth failed to meet the performance standards in provisioning UNE-P dispatch and non-dispatch orders.[52]

117. Rather curiously, BellSouth's August MSS for Louisiana reveals that its provisioning of xDSL orders is sorely deficient in any number of areas. Thus, for example, for xDSL orders, BellSouth: (1) failed to deliver timely FOCs; (2) failed to deliver timely rejection notices; (3) failed to meet the performance standard for jeopardy notice intervals; (4) missed the repair appointment metrics, and (5) failed to meet the performance standards on customer trouble reporting. BellSouth's own results reflect significant performance failures in this emerging market. Thus, BellSouth's own defective data show that it has not met and is not meeting its obligations to provide nondiscriminatory access.

VI. BELLSOUTH'S PERFORMANCE REMEDY PLANS ARE INADEQUATE.

118. As the Commission has recognized, the public interest analysis in Section 271(d)(3)(C) is an independent element of the "statutory checklist" that "requires an independent determination."[53] As part of that analysis, the Commission has recognized that a

[52] *See* August 2001 MSS, Measurement P-3.

[53] *New York 271 Order* ¶ 423.

BOC's performance monitoring and enforcement plan can "constitute probative evidence that the BOC will continue to meet its Section 271 obligations and that its entry would be consistent with the public interest."[54]

119. The principal purpose of an anti-backsliding plan is to provide sufficient monetary incentives for a BOC to continue providing CLECs the nondiscriminatory support that is required after a Section 271 approval. After a BOC is authorized under Section 271 to provide long distance services, it will no longer have the powerful business incentives provided by the lure of Section 271 approval to provide nondiscriminatory support for CLECs. Indeed, the BOC will have powerful incentives to take advantage of its position as the supplier of facilities and services essential to competitors to drive those competitors out of both the local and long distance markets. This problem is especially troublesome because, after Section 271 authority is granted, the BOC can provide a full array of local and long distance services through the well established "PIC change" process, while CLECs cannot provide local and long distance services to their customers without substantial reliance on the BOC's support systems and processes.

120. As a consequence, it is necessary to counterbalance the BOC's very real, anticompetitive business incentives with the prompt application of monetary consequences based on an anti-backsliding plan that will promptly detect and deter such behavior. In order to offset the anticompetitive incentives that are inherent in the BOC's position with incentives to provide nondiscriminatory performance for CLECs, an anti-backsliding plan must have sufficient and definite monetary consequences to preclude the BOC from rationally concluding that it stands more to gain by discriminating and paying the consequences under the remedy plan, than by competing in a fair manner on a level playing field.

[54] *New York 271 Order* ¶ 429.

121. As the Commission explained in its *Michigan 271 Order*, to provide the most effective possible deterrent against discriminatory performance after a Section 271 application is granted, an anti-backsliding plan should include "appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards."[55] To meet this standard, an anti-backsliding plan must have sufficient monetary consequences to dissuade the BOC from exercising its natural incentives to leverage its monopoly power in the local market, together with its position as the primary supplier of wholesale inputs to CLECs, to harm competition in both the local and long distance markets. In addition, in order to serve as an effective deterrent, the consequences of discriminatory performance must be unambiguous, and those consequences should be essentially self-executing and as immediate as possible. In that connection, the Commission has emphasized the importance of remedial measures that are "automatically triggered" by noncompliant conduct:[56]

> [A]s part of our public interest inquiry, we would want to inquire whether the BOC has agreed to private and *self-executing enforcement mechanisms* that are automatically triggered by noncompliance with the applicable performance standard without resorting to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.

122. In its *New York 271 Order*, the Commission identified the following key elements in a performance monitoring and enforcement plan that would support a showing "that markets will remain open after grant of the application":[57]

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[55] *Michigan 271 Order* ¶ 394. *See also Second BellSouth Louisiana* Order, ¶ 364.

[56] *Michigan 271 Order* ¶ 394.

[57] *New York 271 Order* ¶ 435.

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- reasonable assurances that the reported data is accurate.[58]

A. **The Georgia SEEM is Inadequate to Deter Anticompetitive Conduct.**

123. In its application BellSouth asserts that the Georgia SEEM satisfies all of the key criteria identified by this Commission in its *New York 271 Order*. Varner GA Aff. ¶ 301. *See also id.* ¶ 303. BellSouth's assertion is meritless.

124. BellSouth's Georgia SEEM contains so many fundamental structural flaws that it does not provide any meaningful protection against discriminatory conduct by BellSouth. Significantly, BellSouth recently conceded that the remedies under the SEEM were not designed to deter discriminatory conduct.[59] In addition, the Georgia SEEM suffers from the following major deficiencies that prevent it from serving its intended purposes:

(1) The Georgia SEEM is based on a performance measurement plan and data that have not been verified with respect to their accuracy and completeness.

(2) The Georgia SEEM contains an absolute cap that limits BellSouth's potential liability and, therefore, reduces any incentive to comply with performance standards.

(3) The Georgia SEEM is a transaction-based plan that permits BellSouth to avoid experiencing any financial consequence for

[58] *Id.* ¶ 433.

[59] Tr. V. 1 at 288-289 (Varner), Case No. 2001-105 (Ky. PSC, Sept. 24, 2001).

performance failures and otherwise generates insufficient remedies to deter noncompliant conduct.

(4) The various methodologies in the Georgia SEEM, including the volume proportion methodology, aggregation of sub-measures, delta value, and Benchmark Adjustment Table, systematically limit BellSouth's potential liability for performance failures; and

(5) The Georgia SEEM excludes performance measurements that are essential to the development of competition in local markets.

1. Status of Development of the Georgia SEEM.

125. BellSouth's reliance on the Georgia SEEM to support its application is premature. No anti-backsliding plan can be complete unless it is based upon fully developed and validated performance measurements and enforcement mechanisms. These conditions do not presently exist in Georgia. The GPSC has ordered an audit of BellSouth's SEEM, however, that audit is not complete. Further, the GPSC has not yet resolved significant issues the CLECs have raised in workshops regarding the changes to the metrics that are necessary to assure accuracy in reporting.

126. Additionally, KPMG's audit of performance metrics in Georgia is still ongoing. However that audit, coupled with the preliminary results of OSS Third Party Testing in Florida, reveals that BellSouth's performance reporting processes are riddled with errors. Getting the metrics right and ensuring the accuracy of performance data are absolutely essential since they serve as the springboard for any remedy plan.

2. Absolute CAP.

127. The Georgia SEEM establishes an "[a]bsolute cap of 44% of [BellSouth's] net revenue." Varner GA Aff., Ex. PM-26. An absolute maximum annual cap on the monetary consequences of discrimination under the Georgia SEEM is much too limited to create the incentives necessary to assure that BellSouth will comply with its nondiscrimination obligations.

From an economic perspective, the purpose of a performance assurance plan is to deter BellSouth from engaging in anticompetitive conduct, and that objective can only be achieved if the magnitude of the financial consequences of discriminatory behavior by BellSouth is greater than the expected value of the gains that BellSouth will be able to earn by discriminating against CLECs.

128. An absolute cap in the Georgia SEEM that limits BellSouth's liability for discriminatory performance for CLECs does not and would not serve the public interest. Indeed, an absolute cap provides BellSouth with the means to evaluate whether the monetary consequences of noncompliant behavior are dwarfed by the benefits that BellSouth can enjoy by excluding competition and retaining its monopoly position as a provider of local telecommunications service in its local market in Georgia. Indeed, if BellSouth's performance failures result in remedy payments that reach the absolute cap, BellSouth clearly would have absolutely no incentive to ensure that its performance did not deteriorate further. If BellSouth reaches the annual cap in any period, there is absolutely no reason why it should be free to continue its discriminatory conduct without fear of suffering any additional financial consequences. In fact, when BellSouth's performance has been broadly and demonstrably substandard for a sustained period of time, the consequences should be even greater because such a condition will likely have prolonged effects on the market and consumers.[60]

129. Furthermore, as explained in the following sections, the maximum annual cap established by BellSouth has no real significance for BellSouth because of the various

[60] For these reasons, AT&T has advocated the adoption of a procedural, rather than maximum annual cap. Under a procedural cap, if the annual limit is reached, the GPSC would conduct an additional investigation to determine whether additional remedy payments should be made. Under a procedural cap, BellSouth would not be able to calculate precisely whether discrimination is more profitable than compliant conduct. At the same time, BellSouth would be protected against payment for "unfair" consequences because it would not be required to pay more than the procedural cap without further review by the GPSC.

methodologies and tools that BellSouth uses that limit BellSouth's exposure to potential liability. As a result of these fundamental structural flaws in the Georgia SEEM, the amount claimed by BellSouth to be at risk under its remedy plan is nothing more than an illusion because the structure of the plan renders remote any likelihood that amounts even approaching the annual cap would ever be paid, even if BellSouth were to engage in blatant discrimination that excludes CLECs from the market.

3. Transaction-Based Plan.

130. Unlike the New York performance remedy plan which is a measurement-based plan, the remedies under the Georgia SEEM accrue on a transaction-basis.[61] Under a measurement-based plan, performance remedies accrue at the level at which comparisons can be made (*i.e.* at the measure/sub-measure level). As a consequence, the remedy payments are a direct function of the BOC's departure from the relevant performance standard. A measurement-based plan can generate remedy payments sufficient enough to motivate a BOC to comply with its statutory obligations even when CLEC transaction volumes are relatively low.

131. In stark contrast, the transaction-based SEEM permits BellSouth to escape experiencing financial consequences for performance failures. In this regard, during the nascent stages of competition, CLEC transaction volumes will be insubstantial. Because penalties under the Georgia SEEM accrue on a transaction basis, any penalties that BellSouth will incur will be relatively modest. Thus, the Georgia SEEM has the perverse effect of placing CLECs in a proverbial Catch-22. In order to compete effectively in the marketplace and gain significant market share, CLECs must obtain nondiscriminatory support from BellSouth. However, under

[61] Similarly, the Tennessee Regulatory Authority also ordered a measurement-based plan in the ITC^DeltaCom and BellSouth Arbitration that became the "base remedy plan" for the general proceedings on performance measurements. Tennessee Regulatory Authority, In *re: Petition for Arbitration of ITC^DeltaCom Communications,*

the Georgia SEEM BellSouth can thwart competitive entry and pay paltry penalties based upon the meager volumes of CLEC transactions spawned by BellSouth's non-compliant conduct.

132. Currently, BellSouth does not permit CLECs to have a full and fair opportunity to compete. As a result, CLEC transaction volumes in Georgia are miniscule. Inextricably linking penalty payments to such low transaction volumes destroys any possible incentive that BellSouth might have to comply with performance standards. Thus, BellSouth's Georgia enforcement plan is clearly ineffective.

133. Additionally, as explained in more detail below, under BellSouth's Georgia transaction-based plan, BellSouth does not make remedy payments for a majority of transactions when it has failed to satisfy the required performance standards. Clearly, a remedy plan that produces such a result could not possibly motivate BellSouth to provide CLECs with nondiscriminatory service or open the market to local competition as the Telecommunications Act of 1996 envisioned.

4. SEEM's Methodologies

134. **Affected Volume and Parity Gap Calculations.**[62] As explained in more detail in the Declaration of Dr. Bell, the Georgia SEEM permits BellSouth to avoid remedy payments for the far majority of the transactions that fail to meet the performance standard. The affected transactions as to which BellSouth would be subject to penalties are reduced in significant measure by virtue of the operation of various methodologies in the Georgia SEEM

Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996, Final Order of Arbitration, Docket No. 99-00430, February 23, 2001.

[62] The term "affected volume" in BellSouth's Georgia SEEM refers to "the proportion of the total impacted CLEC volume or CLEC aggregate volume for which penalties will be paid." Varner (GA) Aff. Ex. PM-8 ¶ 4.1.6. The term "parity gap" is defined by BellSouth as "the incremental departure from a compliant level of service." Id. ¶ 4.1.8. The parity gap is the difference between the observed truncated Z score and the balancing critical value.

that are used to calculate remedy payments and minimize BellSouth's exposure to liability for performance failures.

135. For example, BellSouth uses the "affected volume" methodology to determine the number of failed transactions that will be subject to performance remedy payments. The "affected volume" is the product of two factors: (1) a fraction referred to as the "volume proportion" and (2) the number of transactions representing performance violations from cells having negative z-scores. BellSouth derives its volume proportion by dividing the parity gap by 4. In any statistical analysis, there is always the possibility of Type I errors. BellSouth claims that this condition is appropriately mitigated by using a linear function with a slope of ¼ to determine the volume proportion to be used in calculating the affected volume.

136. However, as Dr. Bell explains in his declaration, BellSouth's approach is fundamentally and conceptually flawed and simply permits BellSouth to inappropriately reduce its liability for performance failures. Remarkably, even BellSouth has admitted that its "affected volume" approach "is not a clear concept,"[63] and that it is merely "an approximation" of the number of transactions that should be remedied.[64] Relatedly, when the Florida Commission evaluated Bell South's proposed remedy plan in that State — a remedy plan that also incorporated the parity gap and affected volume methodology — the Florida Commission found that there were "serious issues with BellSouth's parity gap and affected volume calculations."[65] Because of these concerns the Florida Commission approved a measure-based remedy plan.

[63] Order No. PSC-01-1819-FOF-TP, *In re: Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies,* Docket No. 000121-TP (Fla. PSC, Sept. 10, 2001) ("*Florida Performance Measurement Order*") at 151.

[64] Tr. II B at 101 (Coon), In re: Generic Docket on Performance Measurements, Docket No. 01-00193 (TRA) (Ex. 10).

[65] *Florida Performance Measurement Order* at 153.

137. **Three Consecutive Months.** Tier 2 remedies under the Georgia SEEM — that are purportedly designed to counterbalance BellSouth's incentive to damage the CLEC industry in the aggregate -- are triggered if BellSouth fails performance standards for three consecutive months. However, by making penalty payments contingent on subpar performance for three consecutive months, the Georgia SEEM essentially rewards BellSouth for noncompliant performance on an industry-wide level.

138. Thus, under the Georgia SEEM, BellSouth can have two consecutive months of discriminatory performance on an industry-wide basis and not incur any Tier 2 remedies if it satisfies the performance standard in the third month. Indeed, under the Georgia SEEM, BellSouth could actually provide discriminatory services at the industry level for 8 months of the year and suffer no Tier 2 penalties.

139. To make matters worse, BellSouth's financial exposure under Tier 2 is further reduced because any penalties that it incurs are based upon *an average* of the affected volume transactions over three consecutive months of non-compliant performance. Simply stated, if BellSouth has engaged in noncompliant performance at the industry level for three consecutive months and the affected volume transactions in each month are 10, 20 and 30, BellSouth's penalties are based upon the average of these transactions (*i.e.* 20 transactions instead of 60 transactions). Thus, Tier 2 of the Georgia SEEM can operate in such a manner that BellSouth can engage in discriminatory conduct for 8 months with impunity. And even when BellSouth is required to pay Tier 2 penalties, they amount to nothing more than the cost of doing business.

140. **Truncated z.** A performance measurement plan must include an appropriate statistical methodology to determine whether BellSouth is providing CLEC

customers with service at parity to the service it provides to its retail customers. Merely reporting averages of performance measurements alone, without further analysis, does not assess whether differences in performance results for CLEC customers versus a retail analog reflect actual discrimination or the effects of random variation. Once appropriate measures and comparison samples have been established, statistical tests compare the size of observed differences with the amount that could be expected to occur by chance under conditions of true parity of service. These comparisons help to determine quantitatively whether BellSouth has provided nondiscriminatory treatment to CLECs for measures with a retail analog. No statistical methodology is required for benchmark measures. BellSouth either passes or fails the benchmark.

141. The Georgia SEEM uses the Truncated z statistical test methodology to evaluate BellSouth's performance for parity measures with retail analogs. Truncated z aggregates modified z scores that are used to compare results in disaggregated cells. For each cell, BellSouth's performance for its retail operations is compared with the performance it provides to a CLEC to create a z score (the modified z statistic), which in turn, is used to assess whether BellSouth's performance for a CLEC is in parity with its performance for its retail operations.

142. As Dr. Bell explains, Truncated z was designed to combine results from cells for which BellSouth's performance relative to parity is expected to be similar. However, aggregation methods – including Truncated z – should not be used to aggregate heterogeneous cells. If heterogeneous cells are combined, Truncated z can permit parity service in some cells to conceal discrimination in other cells.

143. The aggregation that is reflected in BellSouth's remedy plan is flawed. For example, although the completion intervals for DS1 Loops and 2-Wire Analog Loops are quite different, the Georgia SEEM aggregates these measures. The interval for DS1 Loops is 23 days and the interval for 2-Wire Analog is 4 days.[66] Aggregating these products is inappropriate and does not permit "apple-to-apple" comparisons. Moreover, such aggregation allows discrimination on high-revenue/low volume products such as DS1s or DS3s to be masked through combination with a dissimilar high volume products such as Analog Loops.

144. Indeed, the Florida Commission, which also adopted the Truncated z statistical methodology, squarely rejected BellSouth's SEEM disaggregation. In rejecting BellSouth's position, the Florida Commission found that:

> BellSouth is proposing only seven levels of product disaggregation for penalty determination. We find that this product reaggregation is inappropriate for penalty determination . . . . We find that BellSouth product disaggregation for compliance shall match what it has recommended, and we have approved, for product reporting purposes . . . . We estimate there would be over 825 levels of disaggregation for compliance reporting and penalties for Tier 1 and over 875 total levels of disaggregation for compliance reporting and penalties for Tier 2. (*Florida Final Order* at 105)

145. **Delta Value**. As part of the statistical methodology, BellSouth and the CLECs in Georgia support the use of a balancing critical value. In using the balancing methodology, some level of disparity in service is permitted to exist between the level of service BellSouth provides to its own retail operations and the level of service BellSouth provides to CLECs. The parameter delta measures the size of the violation. The smaller the delta is, the less disparity it allows. Ideally, the delta value should yield a balance between the possibility that the data would indicate discrimination where it did not exist (Type 1 error) and the possibility that a

[66] BellSouth Products & Services Interval Guide – Network And Carrier Services, Customer Guide (CG-INTL-001, Issue 3b-December 2000).

random error would make it appear that there was no discrimination when, in fact, there was non-parity performance (Type 2 error).

146. This "balancing critical value," which computes an appropriate critical value, however, cannot be completely derived until the value of the parameter delta is determined. The Georgia SEEM adopts a delta parameter of .50 for Tier 1 measures and .35 for Tier 2 measures. Dr. Bell illustrates the impact of setting the delta parameter at .50 for Tier I. Setting the delta parameter at .50 does not provide CLECs with parity service, but rather permits BellSouth to discriminate excessively against CLECs and their customers without any financial consequences.

147. **Benchmark Adjustment Table**. The Benchmark Adjustment Table in the Georgia SEEM also permits BellSouth to fail more transactions before a non-compliant determination is made. A benchmark proportion for a particular measure with few underlying data points may be practically impossible to attain unless the ILEC always performs perfectly. As a consequence, some adjustment is necessary. However, the Benchmark Table in SEEM permits BellSouth to fail too many transactions before determining that is has failed the performance standard.

5. Omission of Key Measures.

148. BellSouth's potential exposure under the Georgia SEEM is further limited by the selection of a small subset of the metrics in the Georgia SQM. The many metrics that are excluded from the Georgia SEEM will have no consequence at all and thus will not serve either to deter discriminatory performance by BellSouth in those areas or to compensate CLECs. This

exclusion violates the basic requirement that an anti-backsliding plan should encompass a comprehensive range of performance.[67]

149. In rationalizing the fact that the Georgia SEEM excludes measurements in the SQM, BellSouth suggests that such measurements are properly excluded from the remedy plan because: (1) the omitted measures are "inter-related" with measures in the plan; or (2) any performance failures in such areas have no "direct, significant effect on competition" Varner Aff. GA ¶ 336. BellSouth is wrong on both counts.

150. Although BellSouth asserts that any SQM measures that have been omitted from the Georgia SEEM are "interrelated" or presumably, virtually duplicative of other measures in the remedy plan, that assertion is flawed. No industry-developed third-party analysis has been done to validate whether there is a high degree of correlation between measures excluded and included in the Georgia SEEM.

151. Moreover, notwithstanding BellSouth's protestations to the contrary, performance failures associated with the omitted measures could "have a direct, significant effect on competition." Key measures that are omitted from the SEEM include the following:

- Service Inquiry with LSR Firm Order
- LNP Reject Interval
- LNP FOC
- Mean Held Order Interval
- Percentage of Orders Given Jeopardy Notice
- Average Completion Notice Interval
- % Completion Attempts Without Notice or < 24 Hours Notice

[67] *See Michigan 271 Order* ¶ 394 (stating that a remedy plan must be "sufficient to ensure compliance with the established performance standards"); *Second BellSouth, Louisiana Order* ¶ 364 (same).

- Service Order Accuracy
- Coordinated Customer Conversion — Average Recovery Time
- Speed of Answer Performance/Average Speed to Answer-Toll
- Speed to Answer Performance/Percent Answered within "x" seconds — Toll
- Speed to Answer Performance/Average Speed to Answer — DA
- Speed to Answer Performance/Percent Answered with "x" Seconds — DA
- Collocation Average Response Time
- Collocation Average Arrangement Time
- Change Management Notice Average Delay Days
- Change Management Documentation Average Delay Days
- Meantime to Notify CLEC of Network Outage
- Recurring Charge Completeness
- Database Update Interval
- Database Update Accuracy
- NXX and LRNs Loaded by LERG Effective Date
- Notification of Interface Outages
- Percentage of BFR/NBR Requests Processed Within 30 Business Days

152. Because the Georgia SEEM excludes these measures, BellSouth will experience no financial consequences for plainly discriminatory conduct in these areas. Moreover, BellSouth cannot seriously contend that performance failures associated with these omitted metrics would have no significant impact on competition.

153. Thus, for example, the Georgia SEEM does not include measures on LNP-FOC Timeliness. Prompt notification of order confirmation "is significant because, as long as a

competing carrier has not received a FOC, the competing carrier, as well as the customer, is unaware of the status of its order."[68] Recognizing that CLECs cannot provide their customer with an expected due date without an FOC, this Commission has stated that timely order confirmation is "critical to a CLEC's ability to service its customers." *BellSouth South Carolina Order* ¶ 122. And, for many facilities-based CLECs, LNP orders are a critical aspect of their business. As a consequence, performance failures in the area of LNP FOC timeliness can have serious consequences for their carriers.

154. The Georgia SEEM also excludes the SQM measure on the LNP-Reject Interval. This Commission has recognized that "[t]imely delivery of order rejection notices directly affects a competing carrier's ability to service its customers. . . ." *Second BellSouth Louisiana Order* ¶ 118.

155. Similarly, the Georgia SEEM excludes the SQM measure on Service Order Accuracy. This is a critical measure because it measures whether orders are being provisioned accurately. Indeed, even KPMG advised the GPSC to monitor closely BellSouth's performance in this year since poor performance could have a "material adverse impact on a CLEC's ability to compete effectively."[69] And, significantly, BellSouth's performance in this area has been deplorable. Because this critical measure is not included in BellSouth's remedy plan, BellSouth has no incentive to improve its performance.

156. BellSouth also does not include Speed of Answering In Order Center as an enforcement measure in SEEM. Hold times to the LCSC that are unreasonably long hinder the

[68] *Michigan 271 Order* ¶ 18; *BellSouth South Carolina Order* ¶¶ 115, 122.

[69] *See* Letter from M. Weeks to L. Bowles dated March 20, 2001at 2 (Ex. 11).

ability of CLECs to be responsive to their customers. Although the CLEC customer is affected by LCSC hold times, BellSouth's remedy plan omits this measure.

157. Further, the Georgia-SEEM excludes a measure of the Average Jeopardy Interval — a critical measure measurement that "attempts to determine how far in advance a competing carrier receiving notice that its customer's order is in jeopardy of not being completed as scheduled, compared to how far in advance an incumbent LEC's service representative receives such notices."[70] Moreover, the Commission "has previously explained that competing carriers need timely order jeopardy notices to inform their customers of the potential need to reschedule the time for service installation."[71]

158. Because the Georgia SEEM omits key measures, it will suffer no financial consequences for plainly discriminatory conduct. Thus, the plan offers no incentive for BellSouth to meet its statutory obligations after Section 271 relief. The only alternative for CLECs that are experiencing substandard performance in an area that is not covered in BellSouth's remedy plan is to initiate litigation. Such an approach could, at best, correct BellSouth's performance prospectively, without providing any compensation to the CLEC for the damage it has suffered. Moreover, given the uncertainties and delays of litigation, even the threat of litigation would give BellSouth no incentive to comply with its statutory obligations.

B. The Louisiana SEEM is Inadequate to Deter Anticompetitive Conduct.

159. As BellSouth concedes in its application, "the Louisiana SEEM is very similar to the Georgia SEEM Plan." Varner LA Aff. ¶ 305. Thus, for example, the Louisiana SEEM is a transaction-based plan that employs, in large measure, the same methodologies and

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[70] *NPRM* ¶ 62.

[71] *Id*. (footnote omitted).

statistical testing that are used to calculate penalties under the Georgia plan, including the affected volume methodology and benchmark adjustment table. Varner LA Aff. ¶¶ 317-322. As discussed in the previous section, these methodologies and procedures effectively limit BellSouth's exposure to potential liability for noncompliant conduct.

160. The Louisiana Plan differs from the Georgia plan in two important respects. The Louisiana SEEM has adopted a delta value of 1.0 for Tier 1 measures and .50 for Tier 2 measures. As explained in more detail in the Declaration of Dr. Robert Bell, the delta values in the Louisiana Plan do not adequately protect CLECs against TYPE II errors and would permit too many CLEC customers to receive substandard service before BellSouth's performance would be found to be out of compliance. Indeed, the delta values in the Louisiana Plan effectively allow BellSouth to unreasonably discriminate against CLECs and their customers without any financial consequence.

161. Second, unlike the Georgia SEEM remedy plan, the Louisiana SEEM has a procedural, rather than absolute cap. Varner LA Aff. ¶ 308. As BellSouth notes, it has placed $59 million of liability at risk during the first year of the Louisiana SEEM's operation — an amount representing 20% of BellSouth's 1998 net worth revenue in Louisiana. *Id.*

162. In all events, the various methodologies used in the Louisiana Plan, as well as its Georgia counterpart, simply operate to insulate BellSouth from experiencing financial consequences for failing to meet its statutory obligations.

VII. CONCLUSION

BellSouth's performance measures and data provide no support for its claims that it has met its Section 271 obligations. The record evidence in this case reveals that BellSouth's performance monitoring processes are riddled with errors that assure inaccuracies in performance results. What BellSouth must do now is, *inter alia*, improve and stabilize its performance, provide complete and accurate data for all metrics, and assure that the process it uses to collect and report data has been validated. The standards that the Commission has established for Section 271 compliance are too vital to the future of local competition to warrant compromise now. Placating BellSouth now by lowering the compliance bar would simply reward it for failing to comply with its legal obligations under the Act.